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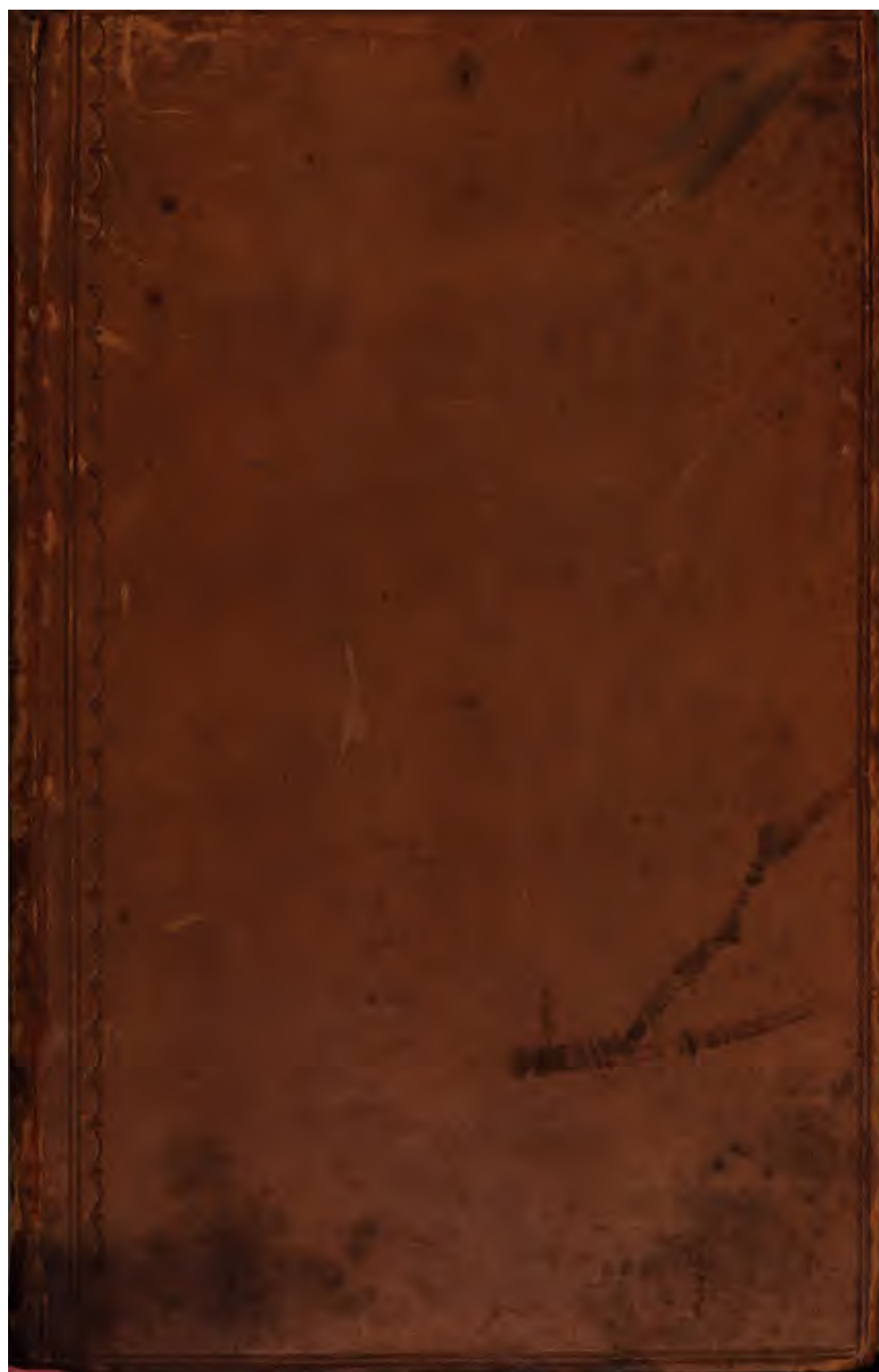
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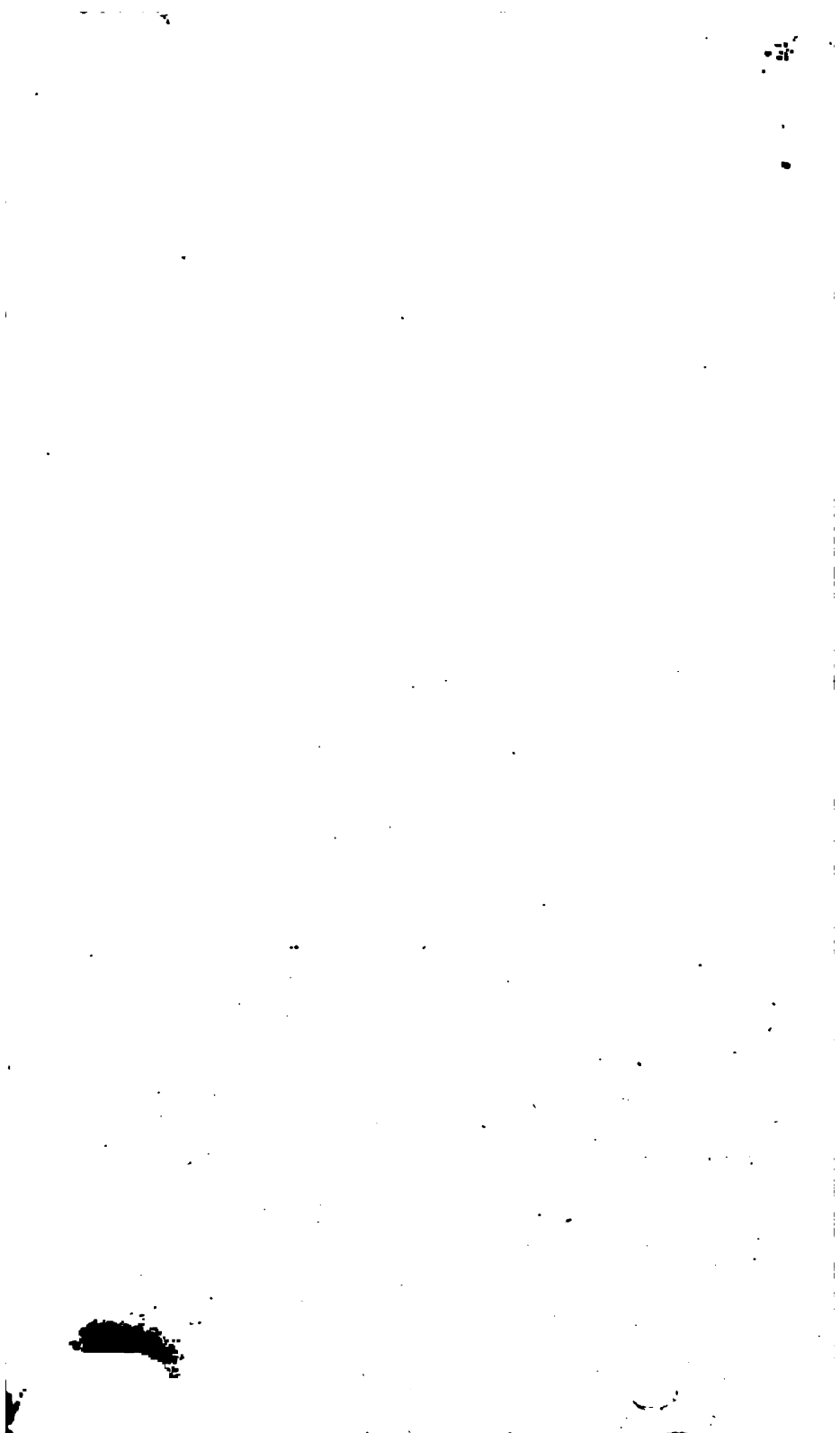
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A  
**TREATISE**  
ON  
**CRIMINAL PLEADING,**

WITH  
PRECEDENTS OF INDICTMENTS,

*SPECIAL PLEAS, &c.*

Adapted to Practice.



—◆—  
By THOMAS STARKIE, Esq.  
OF LINCOLN'S INN, BARRISTER AT LAW.

—◆—  
**VOL. II.**

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*"Allegari non debuit quod probatum non relevat."*

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**LONDON:**  
PRINTED FOR W. CLARKE AND SONS, LAW BOOKSELLERS,  
PORTUGAL STREET, LINCOLN'S INN.

—  
1814.

**Davidson,  
Old Bowell Court, London.**

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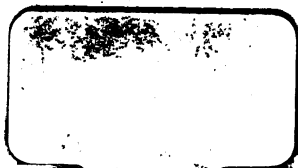
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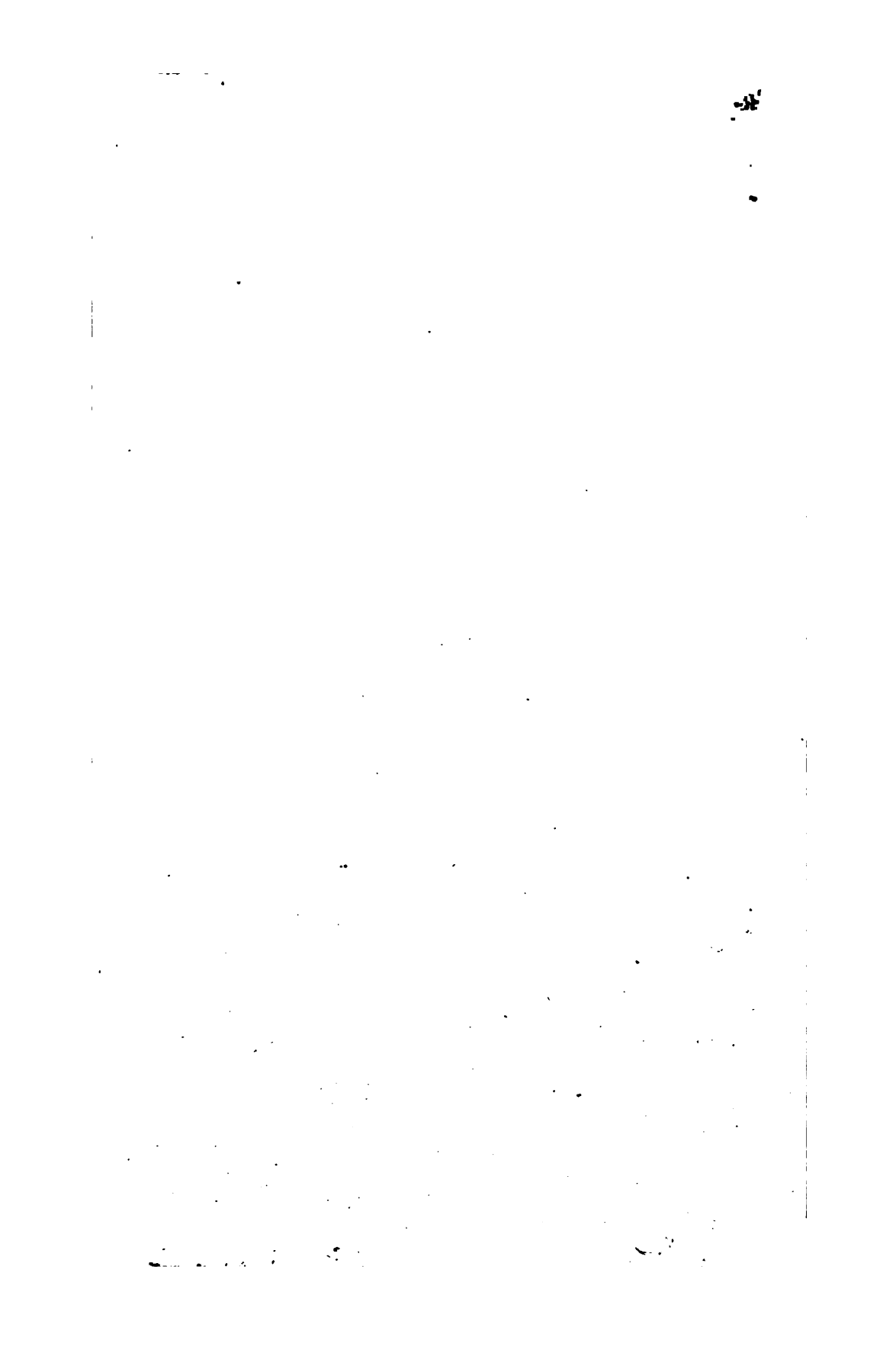
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### 3. *The same with an alias addition.*

\* That A. B. late of B. in the county of L. *gentleman*, otherwise called A. B. late of the same place, *esquire* (i).

### 4. *Conclusion to every count.*

"Against the form of the statute (k) (or *statutes*) in such case made and provided, and against the peace of our said lord the king, his crown, and dignity (l)." *If the indictment or information be at common law, it should conclude simply against the peace, &c.*

### 5. *Commencement of a count subsequent to the first.*

And the jurors aforesaid, upon their oath aforesaid, do further present\* that the said A. B. on, &c. with force and arms, at C. aforesaid, in the county aforesaid, &c.

### 6. *Commencement of an inquisition taken before the coroner.*

*Lancashire*, to wit. An inquisition indented, taken for our sovereign lord the king, at the parish of B. in the county of Lancaster, on the            day of           , in the            year of the reign of our sovereign lord George the third, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, before C. D. (m), one of the coroners of our said lord the king, for the said county, on view of the body of M. N. then and there lying dead, upon the oath (n) of A. B. &c. (*name the jurors*), good and lawful men of the said county, duly chosen, and who being *then and there* (o) duly sworn, and charged to inquire for our said lord the king, when, how, and by what means the said M. N. came to his death, do upon *their oath* say (p), that, &c.

*Conclusion.* And that, after the said E. F. had done and committed the felony and murder aforesaid, he the

(i) See *Fost.* 5.

(k) See p. 215.

(l) See chap. XI.

(m) See the observations,  
p. 221.

(n) See p. 223.

(o) *Ib.*

(p) *Ib.*

said E. F. withdrew and fled for the same, (*if so in fact,*) and that, at the time of the doing and committing thereof, or at any time since, he the said E. F. had no goods or chattels, lands, or tenements within the said county, or elsewhere, to the knowledge of the said jurors, (*according to the fact,*) in witness whereof, as well the said coroner as the said A. B. C. &c. (*the names of all the jurors,*) have to this inquisition set their hands and seals, the day, year, and place, first abovementioned.

7. *Commencement of an information by the attorney-general.*

Michaelmas term, in the ——— year  
of the reign of George the third.

*Middlesex*, to wit. Be it remembered, that A. B. esquire, attorney-general of our sovereign lord the now king, who for our sovereign lord the king prosecutes in this behalf, in his proper person comes into the court of our said lord the king, before the king himself, at Westminster, in the county of Middlesex, on Wednesday next after fifteen days of Saint Martin in this same term, and for our said lord the king gives the court here to understand, and be informed, that, &c.

*Conclusion*:—against the form, &c. (*if necessary*) and against the peace of our said lord the king, his crown, and dignity.

8. *Indictment for levying public war against the king, by riotously assembling, armed with offensive weapons.*

*Middlesex*, to wit. The jurors for our lord the king upon their oath present, that G. G. late of the parish of Saint Mary le Bonne, otherwise Marybone, in the county of Middlesex, esquire, commonly called Lord G. G. being a subject of our said sovereign lord George the third, by the grace of God of (q) Great Britain, France, and Ireland, king, defender of the faith, not having the fear of God before his eyes (r), nor weighing the duty of his allegiance, but being moved (r) and seduced by the insti-

(q) The present style is, "of the united kingdom of Great Britain and Ireland king, defender of the faith."  
(r) These allegations are not material.



gation of the devil, and entirely withdrawing the love and true and due obedience which every subject of our said sovereign lord the king should, and of right ought to, bear towards our said present sovereign lord the king, and (r) wickedly devising and intending to disturb the peace and public tranquillity of this kingdom, on the second (s) day of June, in the twentieth year of the reign of our said sovereign lord the now king, at the parish of Saint Margaret, within the liberty of Westminster, in the said county of Middlesex, unlawfully, maliciously, and *traitorously* (t) did compass, imagine, and intend to raise and levy war, insurrection, and rebellion against our said lord the king, within this kingdom of Great Britain; and in order to fulfil and bring to effect the said traitorous compassings, imaginations, and intentions of him the said G. G. he the said G. G. afterwards, that is to say, on the said second day of June, in the twentieth year aforesaid, with force and arms, &c. at the said parish of Saint Margaret, within the liberty of Westminster, in the said county of Middlesex,\* with a great multitude of persons, whose names are at present unknown to the jurors aforesaid, to a great number, to wit, to the number of five hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with colours flying, and with swords, clubs, bludgeons, staves, and other weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together against our said present sovereign lord the king, most wickedly, maliciously, and traitorously did ordain, prepare, and levy public war against our said lord the king, his supreme and undoubted lord, contrary to the duty of his *allegiance* (u), against the peace of our said lord the king, his crown, and dignity, and also against the form of the statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said G. G. being a subject of our said sovereign lord the king, not having the fear of God before his eyes, but being moved and se-

(r) These allegations do not appear to be material.

(s) The precise day is not essential, see p. 57.

(t) See p. 70.

(u) It is unnecessary to lay

the offence to have been committed against the defendant's duty of *natural* allegiance, see p. 70. and Cranburn's case, St. Tr. 8 Will. 3.

duced by the instigation of the devil, and entirely withdrawing the love and true and due obedience which every subject of our said sovereign lord the king should, and of right ought to, bear towards our said present sovereign lord the king, and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom, afterwards, to wit, on the said second day of June, in the twentieth year of the reign of our said sovereign lord the now king, and on divers other days and times between that day and the tenth day of the same month of June, at the said parish of Saint Margaret, within the liberty of Westminster, in the said county of Middlesex, unlawfully, maliciously, and traitorously did compass, imagine, and intend to raise and levy war, insurrection, and rebellion, against our said lord the king, within this kingdom of Great Britain; and in order to fulfil and bring to effect the said last-mentioned traitorous compassings, imaginations, and intentions, of him the said G. G. he the said G. G. on the said second day of June, in the twentieth year aforesaid, and on divers other days and times between that day and the tenth day of the same month of June, with force and arms, &c. at the said parish of Saint Margaret, within the liberty of Westminster, in the said county of Middlesex. (*Then proceed as in the first count, from the asterisk.*)

9. *An indictment of high treason for coining shillings.*

(*Commencement as in pr. 1.*) Twenty pieces of false, feigned, and counterfeit money and coin, of pewter, lead, tin, and other mixt metals, to the likeness and similitude of the good, legal, and current money and silver coin of our said lord the king of this realm, called shillings, then and there falsely, deceitfully, feloniously, and traitorously did forge, counterfeit, and coin, against the duty of his allegiance, against the peace, &c. and against the form, &c.

10. *Indictment of high treason for having instruments for coining in custody (x).*

That A. B. late of, &c. labourer, and C. D. late of, &c.

(x) The having a mould in the words or other tool or instrument before mentioned, since it is comprehended in Lennard's case, Leach, 105.

labourer, not (y) being persons employed, and neither of them being a person employed, in or for the mint or mints of our said lord the king, in the tower of London or elsewhere, and for the use and service of the said mints only, and not being persons lawfully authorized, and neither of them being lawfully authorized, by the lords commissioners of the treasury, or lord high treasurer of England for the time being, on, &c. with force and arms, at, &c. one pair of (z) *moulds* made of chalk, (each of which said moulds would then make and impress (a) the figure, resemblance, and similitude of one of the sides of the lawful silver coin of this kingdom called sixpences) without any lawful authority or sufficient excuse for that purpose, knowingly and traitorously\* had in the custody and possession of them the said A. B. and C. D. at, &c. against the duty of their allegiance, against the peace, &c. and also against the form of the statute, &c.

11. *Indictment for hiding and concealing coining-tools.*

*As in the above indictment, to the \**, in the dwelling-house of E. F. situate at the parish aforesaid, in the county aforesaid, did hide and conceal, against the duty of their allegiance, against the peace, &c. and also against the form of the statute, &c.

By stat 8 & 9 W. 3. c. 26. s. 1. it is enacted, That no smith, engraver, founder, or other person or persons whatsoever (other than and except the persons employed or to be employed in or for his majesty's mint or mints, in the tower of London or elsewhere, and for the use and service of the said mints only, or persons lawfully authorized by the lords commissioners of the treasury, or lord high treasurer of England, for the time being), shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending of any puncheon, counter-puncheon, matrix, stamp, dye, pattern, or mould, of steel, iron, silver, or other metal or metals, or of spaud or fine founder's earth, or sand, or of any other materials whatsoever, in or upon which there shall be, or be made or impressed, or which will make or impress, the figure,

(y) As to the necessity of these allegations, see p. 160. (a) See Lennard's case, Leach, 105.

(z) See note (x), p. 359.

stamp, resemblance, or similitude of both or either of the sides or flats of any gold or silver coin current within this kingdom; nor shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending, of any edger or edging-tool, instrument, or engine, not of common use in any trade, but contrived for making of money round the edges with letters, grainings, or other marks or figures resembling those on the edges of money coined in his majesty's mint, nor any press for coinage, nor any cutting-engine, for cutting round blanks by force of a screw out of flatted bars of gold, silver, or other metal; nor shall knowingly buy or sell, hide or conceal, or, without lawful authority or sufficient excuse for that purpose, knowingly have in his, her, or their houses, custody, or possession, any such puncheon, counter-puncheon, matrix, stamp, *dye* (b), edger, cutting-engine, or other tool or instrument before-mentioned; and if any smith, engraver, founder, or other person or persons whatsoever, (other than and except as aforesaid) shall offend in any the matters or things aforesaid, then all and every such offender and offenders, their counsellors, procurers, aiders, and abettors, shall be, and is and are hereby adjudged to be, guilty of high treason; and being of the said offences, or any of them, convicted or attainted, according to the order and course of the laws of this realm, shall suffer death as in case of high treason.

By sec. 9. the prosecution must be commenced within three months.

By stat. 7 Ann, c. 25. s. 1. the stat. 8 & 9 Will. 3. c. 26. is made perpetual; and by s. 2. the makers and menders of tools, and such as mark money round the edges, &c. may be prosecuted within six months.

12. *For petit treason, against a woman, for poisoning her husband* (c).

That A. B. late of, &c. widow, late wife of J. B. late of the same place, yeoman, deceased, of her malice afore-

(b) See an indictment against two persons for having a dye in their custody, for the purpose of coining shillings, Cro. C. C. 111. 8th edit.

(c) See p. 32. 306, 307. and pr. 15.

thought, contriving, devising, and intending him the said J. B. her said late husband, to deprive of his life, and him feloniously and traitorously to kill and murder, on, &c. with force and arms, at, &c. in the county aforesaid, feloniously, traitorously, wilfully, and of her malice aforethought, did mix and mingle a great quantity of deadly poison, to wit (*d*), arsenic, with a quantity of water-gruel; and that she the said A. B. then and there, feloniously, traitorously, wilfully, and of her malice aforethought, did give and deliver the said poison, so mixed with the said water-gruel as aforesaid, to the said J. B. her said then husband, to be drank by him the said J. B. (she the said A. B. then and there well knowing the said arsenic to be a deadly poison); and that the said J. B. by the persussion and at the instigation of the said A. the said poison so mixed with water-gruel as aforesaid (not knowing the same to be deadly poison), did then and there drink, and swallow down into his body, by which drinking and swallowing of the said poison, so mixed with water-gruel as aforesaid, the said J. B. then and there became sick and greatly distempered in his body, of which said sickness and distemper he the said J. B. from, &c. until, &c. at, &c. did languish, and languishing did live, on which said — day of —, in the year aforesaid, the said A. B. at the parish aforesaid, in the county aforesaid, of the poison aforesaid, so drank and swallowed as aforesaid, and of the said sickness and distemper, occasioned by the drinking of the said poison, so mixed with water-gruel as aforesaid, died: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. the aforesaid J. B. her said late husband, in manner and form aforesaid, feloniously, traitorously, wilfully, and of her malice aforethought, did poison, kill, and murder, against the peace of our said lord the king, his crown and dignity.

13. *Commencement of an indictment for murder or manslaughter.*

*Lancashire (e)*, to wit. The jurors for our lord the king upon their oath present, that A. B. late of the parish

(*d*) See Nicholson's case, stat. 2 & 3 Ed. 6. c. 24. and p. 54. stat. 2 & 3 Ed. 6. c. 24. and supra, p. 5.

(*e*) As to the venue, see the

of C. in the county of Lancaster, labourer (e), not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil (f), on the ——— day (g) of ———, in the ——— year of the reign of our sovereign lord George the third, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms (h), at the parish aforesaid, in the county aforesaid\*, in and upon one E. F. (i), in the peace of God and our said lord the king, then and there (k) being, *feloniously* (l), wilfully, and of his malice (l) *aforethought*, did make an assault, and that, *(after stating the means and manner (m) of committing the offence, allege the death thus:)* of which said mortal strokes, wounds, and bruises, *(according to the fact)* the said E. F. from the said ——— day of ———, in the year aforesaid, until the ——— day of ———, in the same year, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said ——— day of ———, in the year aforesaid, the said E. F. at the parish aforesaid, in the county aforesaid, of the said mortal strokes, wounds, and bruises died *(or if the party died very soon after the stroke, &c. thus,)* of which said mortal strokes, wounds, and bruises, the said E. F. then and there instantly died. *(And conclude thus,)* and so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. him the said E. F. in the manner and by the means aforesaid, *(or last aforesaid in concluding to a second or subsequent count,)* feloniously, wilfully, and of his malice aforethought, did kill and murder (n), against the peace (o) of our said lord the king, his crown and dignity (p).

(e) As to the name and addition, see chap. 3.

(f) This averment, though frequently introduced, is unnecessary.

(g) Both the day of the stroke and of the death must be stated, see p. 55. 2 Hale, 179. East. P. C. 344.

(h) These words are unnecessary in an indictment for murder, since the force is fully implied. 2 Haw. c. 25. s. 90, 91. 2 Hale, 87.

(i) As to the name of the person murdered, see p. 172.

(k) This averment is unnecessary, see p. 172.

(l) These are essential words, see p. 71.

(m) For the general rules relating to this description, see p. 85.

(n) The technical term *murder*, as well as the words *feloniously* and *of malice aforethought*, are essential to the indictment, see p. 71. The

14. *In an indictment for manslaughter, the conclusion is, and so the jurors aforesaid, upon their oath aforesaid, do say; that the said A. B. him the said E. F. in manner and by the means aforesaid, feloniously did kill and slay, against the peace, &c.*

15. *Indictment against M. B. for the murder of her father by intermixing arsenic with tea and water-gruel, of which he drank at different times.*

That M. B. late of, &c. spinster, daughter of Francis Blandy, late of the same place, gentleman, deceased, not having the fear of God before her eyes, but being moved

term *murdrum* originally meant the amercement which was exacted from the township when a person was privately murdered, and the offender not apprehended. Fost. 281. 1 Hale, 447. Brac. de Coron. c. 15. And in that sense it is used in the stat. of Marlbridge, 52 H. 3. c. 26. And hence the term *murdrum* was afterwards used to signify the offence which occasioned the amercement, viz. *occulta occisio nullo sciente aut vidente*, Bract. cap. de *murdro*, and every other homicide was termed *homicidium nequiter et in feloniam factum*; but there was no distinction between murder and manslaughter as to punishment upon conviction, Fost. 302. The term was afterwards used more extensively to mean any homicide attended with circumstances which indicated preconceived malice, Staundf. c. 10. and from the 50th of E. 3. acts of general pardon constantly except murder described as of *malice prepensed*, or by words tantamount, and the stat. 13 R.

2. st. 2. c. 4. enacts, that no pardon shall be allowed for murder or for the death of a man slain by await, assault, or *malice prepensed*, unless the same be specified in the charter, &c.

The stat. 12 H. 7. c. 7. is included in the stat. 1 E. 6. c. 12. mentioned below; the stat. 23 H. 8. c. 1. s. 3. ousts of clergy all found guilty of malice prepensed, or of any abetment, procurement, &c.; the stat. 25 H. 8. c. 3. refers to the 23d of H. 8.; these are repealed by the stat. 1 E. 6. c. 12. which takes away clergy from murderers of malice prepense, if found guilty, or confessing the same upon arraignment, or not answering directly, or standing wilfully mute; and the stat. 4 & 5 Ph. & M. c. 4. ousts of clergy accessories before the fact. For other matters relating to this offence, see the Index, tit. Murder and Evidence.

(o) Essential, see p. 196.

(p) See p. 198, and as to the conclusion in general, see p. 895.

and seduced by the instigation of the devil, and of her malice aforethought, contriving and intending him the said Francis Blandy, her late father, in his life-time to deprive of his life, and him feloniously to kill and murder, on, &c. and on divers other days and times between the said — day of —, and the — day of — in the year aforesaid, with force and arms, at the parish of H. aforesaid, in the county aforesaid, did knowingly, wilfully, feloniously (t), and of her malice aforethought, mix and mingle certain deadly poison, to wit, white arsenic (u), in certain tea which had been at divers days and times during the time aforesaid prepared for the use of the said Francis Blandy, to be drank by him the said Francis Blandy, she the said M. B. then and there well knowing that the said tea, with which she the said M. B. did so mix and mingle the said deadly poison as aforesaid, was then and there prepared for the use of the said Francis Blandy, with intent (x) to be then and there administered to him, for his drinking the same; and the said tea, with which the said poison was so mixed as aforesaid, afterwards, to wit, on the said — day of —, and on the said other days and times, at the parish of H. aforesaid, in the county aforesaid (y), was delivered to the said Francis Blandy, to be then and there drank by him; and the said Francis Blandy (not knowing the said poison to have been mixed with the said tea) did afterwards, to wit, on the said — day of —, and on the said divers other days and times, there drink and swallow down into his body several quantities of the said poison, so mixed as aforesaid with the said tea; and that the said M. B. might more speedily kill and murder the said Francis Blandy, she the said M. B. on the said — day of —, and on divers others days and times between the said — day of —, and the — day of —, in the year of the reign aforesaid, with force

(t) p. 71.

(u) The kind of poison is not material, see p. 85.

(x) See Nicholson's case, p. 54.

(y) If the prisoner had delivered the poison, it would have been proper to aver, as in Nicholson's case, p. 54. "that

the said M. B. the said tea, with which, &c. did *with the intent aforesaid*, on, &c. at, &c. deliver to the said F. B." See p. 53, 54. And if she had *procured* the same by an innocent agent the same averment would have been proper.



and arms, at the parish aforesaid, in the county aforesaid, did knowingly, wilfully, feloniously, and of her malice aforethought, mix and mingle certain deadly poison, to wit, white arsenic, with certain water-gruel, which had been made and prepared for the use of the said Francis Blandy, to be drank by him the said Francis Blandy, she the said M. B. then and there well knowing that the said water-gruel, with which the said poison was so mixed as aforesaid, was then and there prepared for the use of the said Francis Blandy, with intent to be then and there administered to him for his drinking of the same; and the said water-gruel, with which the said poison was so mixed as aforesaid, afterwards, to wit, on the said — day of —, and on the said other days and times last aforesaid, at the parish of H. aforesaid, in the county aforesaid, was delivered to the said Francis Blandy, to be then and there drank by him; and the said Francis Blandy (not knowing the said poison to have been mixed with the said water-gruel) did afterwards, to wit, on the said — day of —, and on the day then next following, and on divers other days and times afterwards, and before the said — day of —, there take, drink, and swallow down into his body several quantities of the said poison, so mixed as aforesaid with the said water-gruel; and the said Francis Blandy of the poison aforesaid, and by the operation thereof, became sick and greatly distempered in his body; of which said sickness and distemper of body, occasioned by the said drinking, taking, and swallowing down into the body of the said Francis Blandy of the poison aforesaid, so mixed and mingled in the said tea and water-gruel as aforesaid, he the said Francis Blandy, from the said several days and times on which he had so taken, drank, and swallowed down the same as aforesaid, until the said — day of —, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live: on which said — day of —, in the — year aforesaid, at the parish aforesaid, in the county aforesaid, he the said Francis Blandy of the poison aforesaid(z), so taken, drank, and swallowed down as aforesaid, and of the said sickness and distemper thereby oc-

(z) This allegation is material, see p. 87.

casioned, did die \*: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said M. B. him the said Francis Blandy, in manner and by the means aforesaid, feloniously, wilfully, and of her malice aforethought, did poison, kill, and murder, against the peace, &c.(a)

16. *Indictment for murder by striking with a bucket, tried in the court of Admiralty.*

*Admiralty of England (b).* The jurors for our sovereign lord the king upon their oath present, that William Kidd, late of London, mariner, on, &c. with force and arms, upon the *high sea*, near the coast of Malabar, in the East Indies, and within the jurisdiction of the admiralty of England, in and on board a certain ship, called The Adventure Galley, (whereof the said William Kidd was then commander), then and there being, feloniously, wilfully, and of his malice aforethought did make an *assault* (c) in and upon one W. M. in the peace of (d) God and our said sovereign lord the king then and there being, and to the ship aforesaid, called The Adventure Galley, then and there belonging; and that the aforesaid William Kidd, with a certain wooden bucket, bound with iron hoops (e), of the value (f) of eightpence, which he the said William Kidd then and there had and held in his right hand (g), did violently, feloniously, wilfully, and of his malice aforethought beat and *strike* (h) the aforesaid W. M. in and upon the right side (i) of the head of him the said W. M. a little above the right ear of the said W. M.

(a) See the proceedings on this indictment, in the 10th vol. of the State Trials, p. 1. The facts were clearly proved against the prisoner, and she was executed.

(b) Vide 28 H. 8. c. 15. s. 1.

(c) See p. 85.

(d) Unnecessary, p. 192. n.

(e).  
(e) As to the description of the instrument, see p. 85.

(f) p. 86.

(g) As to the manner, see p. 86.

(h) As to the necessity of this word, see p. 86.

(i) The description must be particular, p. 86; but a variance from it is not material, if the species of death proved be the same with that alleged, p. 86.

(he the said W. M. then and there being *upon the high(k) sea*, in the ship aforesaid, and *within the jurisdiction of the (k) admiralty of England* as aforesaid), giving (l) to the said W. M. then and there with the bucket aforesaid, in and upon the aforesaid right part of the head of him the aforesaid W. M. a little above the right ear of him the said W. M. one *mortal (m) bruise*; of which mortal bruise the aforesaid W. M. from the ——— day of ———, in the ——— year aforesaid, until the ——— day of ——— in the year aforesaid, upon the high sea aforesaid, in the ship aforesaid, and *within the jurisdiction of the admiralty of England aforesaid*, did languish, and languishing did live; on which said ——— day of ———, in the year aforesaid, he the said W. M. upon the high sea aforesaid, near the aforesaid coast of Malabar, in the East Indies aforesaid, in the ship aforesaid, called The Adventure Galley, and *within the jurisdiction of the admiralty of England*, did die: and so the jurors aforesaid, upon their oath aforesaid, do say, that the aforesaid William Kidd him the said W. M. upon the high sea aforesaid, in the ship aforesaid, and *within the jurisdiction of the admiralty of England*, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought did kill and murder, against the peace of our said lord the king, his crown and dignity.

17. *Indictment for murder and petit treason by shooting, viz. against the person who shot, and the widow of the deceased for aiding and assisting (n).*

(Commencement as in pr. 13 to the \*.)

Feloniously (o), wilfully, and of their malice aforethought, and she the said E. B. also *traitorously (o)*, did make an assault upon the said S. B. the husband of her the said E. B. in the peace (p) of God and our said lord the king then and there being; and that the said M. H. a certain gun, of the value of five shillings (q), then and there charged and loaded with gunpowder and divers leaden

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| (k) This is essential, p. 19.     | parties for offences differing in |
| (l) As to this allegation, see    | degree, see p. 32.                |
| p. 231. and <i>Ld. Ray.</i> 1363. | (o) See p. 172.                   |
| (m) Essential, see p. 87.         | (p) Not essential, p. 86.         |
| (n) As to the joinder of these    | (q) Not essential, p. 86.         |

shot, which gun he the said M. H. in both his hands then and there had and held, to, against, and upon the said S. B. then and there feloniously, wilfully, and of his malice aforethought did shoot and discharge; and that the said M. H. with the leaden shot aforesaid, out of the gun aforesaid, then and there, by force of the gun-powder, shot, discharged and sent forth as aforesaid, the aforesaid S. B. in and upon the left side of the head of him the said S. B. near the left ear of him the said S. B. then and there, with the leaden shot aforesaid, out of the gun aforesaid, by the said M. H. so as aforesaid shot, discharged, and sent forth, feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said S. B. with the leaden shot aforesaid, so as aforesaid shot, discharged, and sent forth out of the gun aforesaid by the said M. H. in and upon the left side of the head of him the said S. B. near the left ear of him the said S. B. one mortal wound (a), of the depth of four inches, and of the breadth of two inches, of which said mortal (b) wound the said S. B. then and there instantly died; and that the said E. B. the wife of him the said S. B. then and there *feloniously, traitorously (c), wilfully, and of her malice aforethought* was present, aiding, helping, abetting, comforting, assisting, and maintaining the said M. H. the felony and murder aforesaid, in manner and form aforesaid, to do and commit: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said M. H. feloniously, wilfully, and of his malice aforethought, and the said E. B. feloniously, traitorously, wilfully, and of her malice aforethought, him the said S. B. then and there, in manner and form aforesaid, did kill and murder, against the peace of our said lord the king, his crown and dignity.

18. *Indictment for murder, by placing poison so as to be mistaken by the person poisoned for medicine, laying the offence in two counts.*

That J. D. late of, &c. on, &c. at, &c. a certain quantity of arsenic, to wit, two drachms of arsenic (being a

(a) The description should be precise, but a variance would not be fatal, see p. 86.

(b) Essential, p. 87.

(c) p. 71.

deadly poison), feloniously, wilfully, and of his malice aforethought, did put, infuse in, and mix together, with water, (he the said J. D. then and there well knowing the said arsenic to be a deadly poison); and that the said J. D. the said arsenic, so as aforesaid put, infused in, and mixed together with water, into a certain glass phial bottle, of the value of one penny, did put and pour, and the said glass phial bottle, with the said arsenic put, infused in, and mixed together with water as aforesaid contained therein, then and there, to wit, on the same twenty-ninth day of August, in the twentieth year of the reign of our said lord the king, with force and arms, at the parish aforesaid, in the said county of Warwick, feloniously, wilfully, and of his malice aforethought, in the lodging-room of the said Sir T. B. did put and place, in the place and stead of a certain medicine then lately before prescribed and made up for the said Sir T. B. and to be taken by the said Sir T. B. he the said J. D. then and there feloniously, wilfully, and of his malice aforethought, intending that the said Sir T. B. should drink and swallow down into his body the said arsenic, put, infused in, and mixed together with water as aforesaid, contained in the said glass phial bottle, by mistaking the same as and for the said medicine so prescribed and made up for the said Sir T. B. and to be by him the said Sir T. B. taken as aforesaid; and the jurors aforesaid upon their oath aforesaid, do further present, that the said Sir T. B. not knowing the said arsenic put, infused in, and mixed together with water, as aforesaid, contained in the said glass phial bottle, so put and placed by the said J. D. in the lodging-room of the said Sir T. B. in the place and stead of the said medicine then lately before prescribed and made up for the said Sir T. B. and to be taken by him the said Sir T. B. in manner aforesaid, to be a deadly poison, but believing the same to be the true and real medicine then lately before prescribed and made up for, and to be taken by him the said Sir T. B. afterwards, to wit, on the thirtieth day of August, in the year aforesaid, at the parish aforesaid, in the county aforesaid, the said arsenic, so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, contained in the said glass phial bottle so put and placed by the said J. D. in the lodging-room of him the said Sir T. B. in the place and stead of the said medicine then lately before prescribed and made up for the said Sir

T. B. he the said Sir T. B. did take, drink, and swallow down into his body; by means of which said taking, drinking, and swallowing down into the body of him the said Sir T. B. of the said arsenic, so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, he the said Sir T. B. then and there became sick and distempered in his body, of which said sickness and distemper of body, occasioned by the said taking, drinking, and swallowing down into the body of him the said Sir T. B. of the said arsenic, so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, he the said Sir T. B. on the said thirtieth day of August, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did die: and so the jurors aforesaid, &c. (*Conclude as in pr. 15.*) That the said J. D. feloniously, wilfully, and of his malice aforethought, devising and intending to poison, kill, and murder the said Sir T. B. with a certain poison, called arsenic, on, &c. with force and arms, at, &c. knowing the said poison, called arsenic, to be a deadly poison, feloniously, wilfully, and of his malice aforethought, did mix and mingle the said poison, called arsenic, in water; and that the said J. D. feloniously, wilfully, and of his malice aforethought, did put and pour the said poison, called arsenic, so as aforesaid mixed and mingled in water, into a certain glass phial, and the said glass phial with the said poison, called arsenic, so mixed and mingled in water as aforesaid, contained therein, then and there, to wit, on, &c. at, &c. feloniously, wilfully, and of his malice aforethought, did put and place in the lodging-room of the said Sir T. B. in the dwelling-house of (d) dame Anna Maria B. widow, there situate, with intention that the said Sir T. B. should take, drink, and swallow down into his body the said poison, called arsenic, so mixed and mingled in water as aforesaid, and contained in the said glass phial: and the jurors aforesaid, upon their oath aforesaid, do further present, that the said Sir T. B. not knowing the said poison, called arsenic, so mixed and mingled in water as aforesaid, and contained in the said glass phial, to be deadly poison, afterwards, to wit, on the said thirtieth day of August, in the twentieth year aforesaid, at the parish aforesaid, in

(d) This allegation of ownership does not appear to be material.

the county aforesaid, did take, drink, and swallow down into his body the said poison, called arsenic, so mixed and mingled in water as aforesaid, and contained in the said glass phial; by means of which said taking, drinking, and swallowing down into the body of him the said Sir T. B. of the said poison, called arsenic, so as aforesaid mixed and mingled in water by the said J. D. as aforesaid, he the said Sir T. B. then and there became sick and distempered in his body; of which said sickness and distemper of body, occasioned by the said taking, drinking, and swallowing down into the body of him the said Sir T. B. of the said poison called arsenic, so as aforesaid mixed and mingled in water as aforesaid, by the said J. D. as aforesaid, he the said Sir T. B. afterwards, to wit, on the said thirtieth day of August, in the twentieth year aforesaid, at the parish aforesaid, in the county aforesaid, did die. (*Conclude as before, pr. 15.*)

19. *Indictment against a man for confining and starving his wife to death.*

That J. W. late of, &c. cordwainer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and of his malice aforethought contriving and intending Ann, his wife, feloniously, wilfully, and of his malice aforethought to starve, kill, and murder, on, &c. with force and arms, at, &c. in and upon the said Ann, feloniously, wilfully, and of his malice aforethought, did make an assault, and her the said Ann, in a certain closet in a certain lodging-room, part and parcel of a certain messuage or dwelling-house there situate, feloniously, wilfully, and of his malice aforethought, on, &c. and continually from thence until, &c. did confine and imprison; and continually from, &c. until, &c. feloniously, wilfully, and of his malice aforethought did neglect and refuse to give and administer, or permit to be given and administered, to her the said Ann, being so confined and imprisoned as aforesaid, sufficient meat, drink, victuals, and other necessities, proper and requisite for the sustenance, support, and maintenance of her body; by means of which said confinement and imprisonment, and also for want of such sufficient meat, drink, victuals, and other necessities as were proper and requisite for the sustenance, support, and maintenance of the body of her the said Ann, she the said Ann, from, &c.

until, &c. in the said closet, at the parish aforesaid, in the county aforesaid, did linger and pine, and became greatly emaciated and consumed in her body, and during all that time did languish, and languishing did live; on which said ——— day of ———, in the year aforesaid, she the said Ann, at the parish aforesaid, in the county aforesaid, of such confinement and imprisonment, and for want of such sufficient meat, drink, victuals, and other necessaries, as were proper and requisite for the sustenance, support, and maintenance of her body, did miserably perish and die: and so the jurors, &c. (*Conclude as in pr. 13.*)

20. *Against a woman for drowning her own child in a pond.*

*Commence as in pr. 13, to the\*.* In and upon one M. H. the daughter of her the said C. H. (she the said M. H. then and there being an infant of tender years, to wit, about the age of two years, and in the peace of God and our said lord the king,) feloniously, wilfully, and of her malice aforethought did make an assault; and that the said C. H. then and there feloniously, wilfully, and of her malice aforethought did take the said M. H. into both hands of her the said C. H. and did then and there feloniously, wilfully, and of her malice aforethought, cast, throw, and push the said M. H. into a certain pond, there situate, wherein there then was a great quantity of water; by means of which said casting, throwing, and pushing of the said M. H. into the pond aforesaid, by the said C. H. in form aforesaid, she the said M. H. in the pond aforesaid, with the water aforesaid, was then and there choaked, suffocated, and drowned; of which said choaking, suffocating, and drowning she the said M. H. then and there instantly died: and so the jurors, &c. (*Conclude as in pr. 13.*)

21. *Indictment for murder, as well by striking with a stick, as by choaking, squeezing, and pressing, &c.*

(*Commencement as in pr. 13, stating a joint assault.*) and that he the said J. T. with a certain large stick, of no value, which he the said J. T. in his right hand then and there had and held, her the said F. P. in and upon the head of her the said F. P. then and



there feloniously, wilfully, and of his malice aforethought, divers times did strike and beat, giving to her the said F. P. by the striking and beating of her the said F. P. with the stick aforesaid, in and upon the right side of the head of her the said F. P. one (e) mortal bruise, of which said mortal bruise she the said F. P. then and there instantly died; and that the said J. M. at the time of committing the felony and murder aforesaid, by the said J. T. in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, was (f) present, aiding, helping, abetting, assisting, comforting, and maintaining the said J. T. the felony and murder\* aforesaid, in manner and form aforesaid, to do, commit, and perpetrate: and so the jurors aforesaid (g), upon their oath aforesaid, do say, that the said J. T. and J. M. her the said F. P. then and there, in manner and form\* aforesaid, feloniously, wilfully, and of their malice aforethought did kill and murder, against the peace, &c. (*Second count.*) In and upon the said F. P. feloniously, wilfully, and of their malice aforethought did make an assault; and that the said J. T. both his hands about the neck and throat of her the said F. P. then and there feloniously, wilfully, and of his malice aforethought did fix and fasten; and that he the said J. T. with both his hands so as aforesaid fixed and fastened about the neck and throat of the said F. P. her the said F. P. then and there feloniously, wilfully, and of his malice aforethought did choak and strangle, of which said choaking and strangling she the said F. P. then and there instantly died; and that (*allege the aiding and abetting, and conclude as before, inserting the word last at each of the two asterisks.*) (*Third count.*) In and upon the said F. P. feloniously, wilfully, and of their malice aforethought did make an assault; and that he the said J. T. with a certain large stick, of no value, which he the said J. T. in his right hand then and there had and held, her the said F. P. then and there feloniously, wilfully, and of his malice aforethought, divers times did strike and beat, giving to her the said F. P. then and there, by striking and beating of her as last aforesaid, with the stick last aforesaid, in and upon the right side of the head of her the said

(e) Essential, see p. 87.

(f) As to the averment

against aiders and abettors, see p. 81.

(g) See p. 82.

F. P. one *mortal* bruise; and that the said J. T. also both his hands about the neck and throat of her the said F. P. then and there feloniously, wilfully, and of his malice aforethought did fix and fasten; and that he the said J. T. with both his hands so as last aforesaid fixed and fastened about the neck and throat of her the said F. P. the neck and throat of her the said F. P. then and there did violently squeeze and press; as well of which said striking and beating of her the said F. P. in and upon the right side of the head of her the said F. P. with the stick last aforesaid, as also of the squeezing and pressing of the neck and throat of her the said F. P. with both the hands of him the said J. T. as last aforesaid, she the said F. P. then and there instantly died. (*Allege the aiding and abetting, and conclude as in the preceding count.*)

*22. Indictment for murder, by beating with fists and kicking on the ground, where no visible mortal wound can be discovered.*

*Commence as in pr. 13.* And that the said W. W. then and there feloniously, wilfully, and of his malice aforethought did strike, beat, and kick the said E. D. with his hands and feet in and upon the head, breast, back, belly, sides, and other parts of the body of him the said E. D. and did then and there feloniously, wilfully, and of his malice aforethought cast and throw the said E. D. down unto and upon the ground with great force and violence there, giving unto the said E. D. then and there, as well by the beating, striking, and kicking of him the said E. D. in manner and form aforesaid, as by the casting and throwing of him the said E. D. down as aforesaid, several mortal strokes, wounds, and bruises in and upon the head, breast, back, belly, sides, and other parts of the body of him the said E. D. of which said mortal strokes, wounds, and bruises he the said E. D. from, &c. until, &c. at, &c. did languish, and languishing did live; on which said — day of —, in the year aforesaid, the said E. D. at, &c. of the several mortal strokes, wounds, and bruises aforesaid died. (*Conclude as in prec. 13.*)

23. *Indictment against a defendant who is accessory in one county to a murder committed in another (l).*

*Middlesex*, to wit. (*Assault, as in pr. 13, alleged to have been committed jointly.*) The aforesaid Robert Carliel, with a certain gun, called a pistol, of the value of five shillings, then and there charged with gunpowder and one leaden bullet, which gun the said Robert Carliel, in his right hand then and there had and held in and upon the aforesaid John Turner, then and there feloniously, voluntarily, and of his malice aforethought, did shoot off and discharge, and the aforesaid Robert Carliel, with the leaden bullet aforesaid, from the gun aforesaid then and there sent out, the aforesaid John Turner in and upon the left part of the breast of him the said John Turner, then and there feloniously struck, giving to the said John Turner then and there, with a leaden bullet as aforesaid, near the left pap of him the said John Turner, one mortal wound, of the breadth of half an inch, and depth of five inches, of which mortal wound the aforesaid John Turner, at *London (m)* aforesaid, in the parish and ward aforesaid, instantly died; and that James Irweng, by and of his forethought ma-

(*l*). This was the indictment used against Lord Sanchar, upon which he was convicted and executed. See a full account of the proceedings upon that occasion, 9 Co. 117. It is observable, that though the indictment is founded upon the stat. 2 & 3 E. 6. c. 24. it does not conclude against the form of the statute, nor does this appear to be necessary, for though, before that statute, an accessory in one county to a murder in another, could not have been indicted in either, that

was for want of the authority in the jurors to inquire; and the statute merely remedies the defect without making any alteration either in the nature of the offence or in the measure of punishment, which remained as at common law. See p. 215.

(*m*) It was deemed necessary in this indictment, which was framed upon the stat. 2 & 3 E. 6. c. 24. expressly to allege the perpetration of the murder in the true county, see p. 130. p. 7, 8.

lice, then and there was (n) present, aiding, assisting, abetting, comforting, and maintaining the aforesaid Robert Carliel to do and commit the felony and murder aforesaid, in form aforesaid; and so the aforesaid Robert Carliel and James Irweng the aforesaid John Turner, at London aforesaid, in the parish and ward aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of their forethought malice, killed and murdered, against the peace of our lord the now king, his crown and dignity; and that one Robert Creighton, late of the parish of St. Margaret, in Westminster, *in the county of Middlesex (o)*, esq. not having the fear of God before his eyes, but being seduced by the instigation of the devil, before the felony and murder aforesaid, by the aforesaid Robert Carliel and James Irweng, in manner and form aforesaid done and committed, that is to say, on the 10th day of May, in the 10th year of the reign of our Lord James, by the grace of God, &c. the aforesaid, Robert Carliel (p), at the aforesaid parish of St. Margaret, in Westminster, in the county of Middlesex aforesaid (q), to do and commit the felony and murder aforesaid, in manner and form aforesaid, maliciously, feloniously, voluntarily, and of his forethought malice, did stir up, move, abet, counsel, and procure, against the peace of our said lord the king, that now is, his crown and dignity.

(n) As to the form of charging a defendant as an aider and abettor, see p. 81.

(o) See the stat. p. 7.

(p) See the observations, p. 131.

(q) By stat. 4 & 5 Ph. & M. c. 4. all persons that shall maliciously *command, hire, or counsel* any person to commit petit treason, wilful murder, &c. every such offender being

attainted, or who shall stand mute, &c. or challenge peremptorily above 20, &c. shall be excluded from the benefit of clergy. And it is proper to introduce the words of the statute into the indictment; yet an indictment has been holden sufficient which wholly dropt the words of the statute. See p. 132. Lodowick Grevil's case, And. 195. and *supra*, p. 213.

24. *Against a servant for petit treason and murder (r).*

That Henrietta Radbourne late of, &c. widow, late servant of Hannah Morgan, widow, her mistress, on, &c. with force and arms, at &c. in and upon the said Hannah, the mistress of the said Henrietta, feloniously, traitorously, and wilfully, and of her malice aforethought, did make an assault; and that the said Henrietta, with a certain stick, having a bayonet fixed at the end thereof, of the value of two shillings, which stick she the said Henrietta in both her hands then and there had and held, in and upon the top of the head of her the said Hannah, did then and there feloniously, traitorously, wilfully, and of the malice aforethought of her the said Henrietta Radbourne, strike, cut, stab, and penetrate, giving to the said Hannah Morgan by such striking, cutting, stabbing, and penetrating of the said Hannah Morgan, with the bayonet so fixed at the end of the stick aforesaid, in and upon the top of the head of her the said Hannah Morgan, one mortal wound, of the length of one inch, and of the depth of half an inch, of which mortal wound the said Hannah Morgan, from the said 31st day of May, in the year aforesaid, until the 11th day of July, in the year aforesaid, in and at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said 11th day of July, in the year aforesaid, at the parish aforesaid, in the county aforesaid, she the said Hannah Morgan died: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said Henrietta Radbourne her the said Hannah Morgan, her said mistress, in manner and by the means aforesaid, feloniously, traitorously, wilfully, and of her malice aforethought, did kill and murder, against the peace of our said lord the king, his crown and dignity.

(r) *R. v. Radbourne, Leach*, 512. See the observations on pr. 12. The verdict was entered thus, "*guilty* of the murder but *not guilty* of the treason;" and the judges held that the conviction of murder upon an indictment so framed was proper, see p. 306, 307.

**25. *Against one for shooting the deceased, and against another as aiding and abetting* (z).**

(Commencement as in pr. 13, alleging a joint assault.) And that the said John Taylor a certain gun, called a carbine, of the value of ten pounds, then and there charged with gunpowder and a leaden bullet, which said gun he the said John Taylor in both his hands then and there had and held, at and against the said Samuel Gillham, then and there, feloniously, wilfully, and of his malice aforethought, did shoot off and discharge; and that the said John Taylor, with the leaden bullet aforesaid, by means of shooting off and discharging the said gun so loaded, to, at, and against the said Samuel Gillham as aforesaid, did then and there feloniously, wilfully, and of his malice aforethought, strike, penetrate, and wound the said Samuel Gillham in and upon the right side of the head of him the said Samuel Gillham, near his right temple, giving to him the said Samuel Gillham then and there, with the leaden bullet aforesaid, by means of shooting off and discharging the said gun, so loaded, to, at, and against the said Samuel Gillham; and by such striking, penetrating, and wounding the said Samuel Gillham as aforesaid, one mortal wound in and through the head of him the said Samuel Gillham, of which said mortal wound the said Samuel Gillham did then and there instantly die; and that the said Alexander Shaw then and there feloniously, wilfully, and of his malice aforethought, *was present, aiding, helping, abetting, comforting, assisting, and maintaining* the said John Taylor in the felony and murder aforesaid, in manner and form aforesaid, to do and commit, &c. &c.

**26. *For strangling with a handkerchief* (a).**

(Comm. as in pr. 13 to \*.) Being in a certain coach,

(z) *R. v. Taylor and Shaw*, Leach, 398. The jury found *Shaw* guilty and acquitted *Taylor*; and a majority of the judges were of opinion, that the conviction was good, but the prisoner afterwards received a free pardon. See p. 76.  
(a) From the St. Tr. vol. 4. p. 484. *R. v. Harrison*, for the murder of Dr. Andrew Clenche. The prisoner was convicted and executed.

deadly poison), feloniously, wilfully, and of his malice aforethought, did put, infuse in, and mix together, with water, (he the said J. D. then and there well knowing the said arsenic to be a deadly poison); and that the said J. D. the said arsenic, so as aforesaid put, infused in, and mixed together with water, into a certain glass phial bottle, of the value of one penny, did put and pour, and the said glass phial bottle, with the said arsenic put, infused in, and mixed together with water as aforesaid contained therein, then and there, to wit, on the same twenty-ninth day of August, in the twentieth year of the reign of our said lord the king, with force and arms, at the parish aforesaid, in the said county of Warwick, feloniously, wilfully, and of his malice aforethought, in the lodging-room of the said Sir T. B. did put and place, in the place and stead of a certain medicine then lately before prescribed and made up for the said Sir T. B. and to be taken by the said Sir T. B. he the said J. D. then and there feloniously, wilfully, and of his malice aforethought, intending that the said Sir T. B. should drink and swallow down into his body the said arsenic, put, infused in, and mixed together with water as aforesaid, contained in the said glass phial bottle, by mistaking the same as and for the said medicine so prescribed and made up for the said Sir T. B. and to be by him the said Sir T. B. taken as aforesaid; and the jurors aforesaid upon their oath aforesaid, do further present, that the said Sir T. B. not knowing the said arsenic put, infused in, and mixed together with water, as aforesaid, contained in the said glass phial bottle, so put and placed by the said J. D. in the lodging-room of the said Sir T. B. in the place and stead of the said medicine then lately before prescribed and made up for the said Sir T. B. and to be taken by him the said Sir T. B. in manner aforesaid, to be a deadly poison, but believing the same to be the true and real medicine then lately before prescribed and made up for, and to be taken by him the said Sir T. B. afterwards, to wit, on the thirtieth day of August, in the year aforesaid, at the parish aforesaid, in the county aforesaid, the said arsenic, so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, contained in the said glass phial bottle so put and placed by the said J. D. in the lodging-room of him the said Sir T. B. in the place and stead of the said medicine then lately before prescribed and made up for the said Sir

T. B. he the said Sir T. B. did take, drink, and swallow down into his body; by means of which said taking, drinking, and swallowing down into the body of him the said Sir T. B. of the said arsenic, so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, he the said Sir T. B. then and there became sick and distempered in his body, of which said sickness and distemper of body, occasioned by the said taking, drinking, and swallowing down into the body of him the said Sir T. B. of the said arsenic, so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, he the said Sir T. B. on the said thirtieth day of August, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did die: and so the jurors aforesaid, &c. (*Conclude as in pr. 15.*) That the said J. D. feloniously, wilfully, and of his malice aforethought, devising and intending to poison, kill, and murder the said Sir T. B. with a certain poison, called arsenic, on, &c. with force and arms, at, &c. knowing the said poison, called arsenic, to be a deadly poison, feloniously, wilfully, and of his malice aforethought, did mix and mingle the said poison, called arsenic, in water; and that the said J. D. feloniously, wilfully, and of his malice aforethought, did put and pour the said poison, called arsenic, so as aforesaid mixed and mingled in water, into a certain glass phial, and the said glass phial with the said poison, called arsenic, so mixed and mingled in water as aforesaid, contained therein, then and there, to wit, on, &c. at, &c. feloniously, wilfully, and of his malice aforethought, did put and place in the lodging-room of the said Sir T. B. in the dwelling-house of (d) dame Anna Maria B. widow, there situate, with intention that the said Sir T. B. should take, drink, and swallow down into his body the said poison, called arsenic, so mixed and mingled in water as aforesaid, and contained in the said glass phial: and the jurors aforesaid, upon their oath aforesaid, do further present, that the said Sir T. B. not knowing the said poison, called arsenic, so mixed and mingled in water as aforesaid, and contained in the said glass phial, to be deadly poison, afterwards, to wit, on the said thirtieth day of August, in the twentieth year aforesaid, at the parish aforesaid, in

(d) This allegation of ownership does not appear to be material.



wheel of the said cart, against, upon, and over the head of him the said E. F. then lying upon the ground; and thereby did then and there give to the said E. F. in and upon his head, one mortal fracture and contusion, of which the said E. F. then and there instantly died. (*Conclude as in pr. 14.*)

31. *Indictment under the statute 1 J. 1. c. 8. s. 2. for felony by stabbing (a).*

(*Commence as in pr. 13.*) And that the said A. B. with a certain drawn sword, of the value of five shillings, which he the said A. B. in his right hand then and there had and held, the said E. F. in and upon the left side of the neck of him the said E. F. the said E. F. then and there not having any weapon drawn, and (b) not having then first stricken the said A. B. then and there feloniously did strike, stab, and thrust; and that the said A. B. with the sword aforesaid, to the said E. F. in and upon the left side of the neck of him the said E. F. one mortal wound, of the breadth of three inches, and of the depth of six inches, then and there feloniously did give; of which said mortal wound the said E. F. then and there instantly died. (*Conclude as in pr. 14 (c).*)

(a) The enacting words are, "shall stab or thrust any person that hath not then any weapon drawn, or that hath not then first stricken the party, which shall so stab or thrust." The offender is ousted of clergy upon conviction, if the party stabbed die within six months after the stroke, although malice prepense be not proved. But this stat. has been holden to be but declaratory of the common law. Kel. 55. 1 Hale, 456. Fost. 298.; and therefore the same circumstances, which will justify, excuse, or alleviate at common law, will have their

weight in prosecutions grounded on the statute.

(b) It seems that both these allegations are necessary, 1 Hale, 68.; for though the exceptions are disjunctively stated, this is plainly contrary to the sense of the statute.

(c) It is unnecessary to conclude against the form of the statute, since the offence is felony at common law. See 1 Hale, 468.; but the conclusion would not be improper. As to the intention of the legislature in making this statute, see p. 80.

32. *Indictment for the murder of a bastard child (e.)*

That A. B. late of, &c. spinster, on, &c. being big with a male (*f*) child, the same day and year, at, &c. by the providence of God, did bring forth the said child alive (*g*), of the body of her the said M. alone (*h*) and in secret; which said male child, so being born alive, by the laws of this realm was a bastard; and that the said A. B. afterwards, to wit, on, &c. as soon as the said male bas-

(*e*) By the stat. 43 G. 3. c. 58. repealing the stat. 21 J. 1. c. 27. from and after the said first day of July, in the said year of our Lord one thousand eight hundred and three, the trials in England and Ireland respectively of women charged with the murder of any issue of their bodies, male or female, which being born alive would by law be bastard, shall proceed and be governed by such and the like rules of evidence and of presumption, as are by law used and allowed to take place in respect to other trials for murder.

§ 4. Provided always, And be it enacted, That it shall and may be lawful for the jury, by whose verdict any prisoner, charged\* with such murder as aforesaid, shall be acquitted, to find, in case it shall so appear in evidence, that the prisoner was delivered of issue of her body, male or female, which, if born alive, would have been

bastard, and that she did, by secret burying, or otherwise, endeavour to conceal the birth thereof; and thereupon it shall be lawful for the court, before which such prisoner shall have been tried, to adjudge that such prisoner shall be committed to the common gaol or house of correction for any time not exceeding two years.

(*f*) The sex is material.

(*g*) If upon view of the child it be testified by one witness, by apparent probabilities, that the child was not come to its *debitum partus tempus*, as if it have no hair or nails, or other circumstances, this (says Lord Hale) I have always taken to be a proof by one witness, that the child was born dead, so as to leave it nevertheless to the jury, as upon a common law evidence, whether she were guilty of the death or not.

(*h*) These words do not appear to be necessary.

\* In order to warrant the confinement under this section, it seems to be necessary to charge, that the child was born a *bastard*, but that the concealment need not be averred.

tard child was born, with force and arms, at, &c. in and upon the said child, feloniously, wilfully, and of her malice aforethought did make an assault; and that she the said M. with both her hands about the neck of him the said child then and there fixed, him the said child then and there feloniously, wilfully, and of her malice aforethought did choak and strangle, of which said choaking and strangling the said child then and there instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say, That the said A. B. him the said male bastard child, in form aforesaid, feloniously, wilfully, and of her malice aforethought, did kill and murder, against the peace, &c.

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## ASSAULTS.

### 33. *Common commencement.*

*Lancashire*, to wit. The jurors for our lord the king upon their oath present, that A. B. late of C. in the county of L. labourer, on the ——— day of ———, in the ——— year of the reign of our sovereign lord George the third, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, at the parish of D. in the county aforesaid,\* in and upon one E. F. did make an assault.

### *Commencement of a subsequent count.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. on, &c. with force and arms, at, &c. in and upon the said E. F. did make an assault, &c.

*Conclusion.*—And other wrongs to the said E. F. then and there did, to the great damage of the said E. F. against the peace of our said lord the king, his crown and dignity.

34. *Indictment for a common assault.*

(*Commencement as in pr. 33.*) And him the said E. F. then and there did beat, wound, and ill-treat, so that his life was greatly despaired of. (*Conclude as in pr. 33.*)

35. *Indictment for assaulting a constable in the execution of his office.*

(*Commencement as in pr. 33 to the \*.*) in and upon one E. F. (then being one of the constables (i) of the said parish of C. in the said county of D. in the peace of God and our said lord the king, and in the due execution of his said office, then and there also being,) did make an assault; and him the said E. F. then and there did beat, wound, and ill-treat, so that his life was greatly despaired of. (*Conclude as in pr. 33. and add a count for a common assault.*)

36. *Indictment for an assault and false imprisonment.*

(*Commencement as in pr. 33.*) and him the said E. F. then and there did beat, wound, and ill-treat, so that his life was greatly despaired of; and him the said E. F. then and there unlawfully and injuriously, against the will and without the consent of the said E. F. and also against the laws of this realm, without any legal warrant, authority, or justifiable cause whatsoever, did imprison and detain for a long time, to wit, for the space of ——— hours then next following\*. (*Conclude as in pr. 33, and add a count for a common assault.*)

37. \* *For the like and obtaining five guineas for discharging.*

(*As in the last to the \*, and then add,*) and until he the said E. F. had paid to him the said A. B. the sum of

(i) This is a sufficient allegation, that he was a constable, evidence, that he acted as such. See Gordon's case, Leach, 581, 4 T. R. 366. 5 T. R. 607. 3 T. R. 632.

five pounds and five shillings, of the monies of the said E. F. for his enlargement, and other wrongs, &c.

*38. For the like, and obtaining a note for discharging.*

And until he the said E. F. for his delivery from the said imprisonment, had signed and given to the said A. B. a note under the hand of the said E. F. whereby he the said E. F. promised to pay to the said A. B. the sum of ten pounds, &c.

*39. Indictment for an assault with intent to ravish (k).*

(*Commencement as in pr. 33.*) And her the said E. F. then and there did beat, wound, and ill-treat, so that her life was greatly despaired of, with an intent her the said E. F. *against her will*, then and there feloniously to ravish and carnally know. (*Another count for a common assault.*)

*40. Indictment against two persons for assaulting a married woman, with an intent that one of them should ravish her.*

(*Commencement as in pr. 33. to the \*.*) In and upon E. the wife of one H. S. did make an assault, and her the said E. then and there did beat, wound, and ill-treat, so that her life was greatly despaired of, with intent that he the said J. H. should then and there feloniously, and against the will of the said E. ravish and carnally know her the said E. (*Conclusion as in pr. 33, add a count for a common assault.*)

*41. Indictment for assaulting a woman with quick child, so that the child was brought forth dead.*

(*Commencement as in pr. 1.*) In and upon M. the wife of one W. E. then and there being big with a quick child, did make an assault; and her the said M. then and there did beat, wound, and ill-treat, so that her

(k) If the offence of rape appears to have been actually committed, the prisoner should be acquitted, since the misdemeanor merges in the felony. See p. 38, note (x). *Harmwood's case*, East. P. C. 411.

life was greatly despaired of, by reason whereof she the said M. afterwards, to wit, on, &c. at, &c. did bring forth the said child dead. (*Conclusion as in pr. 33.*)

42. *Indictment for assaulting one of the collectors of a turnpike in the execution of his office.*

(*Commencement as in pr. 1.*) In and upon one E. F. (then and there being one of the collectors and receivers of the monies payable by virtue of a certain act of parliament made in the thirteenth year of the reign of his present majesty king George the third, intituled, "An act to explain, amend, and reduce into one act of parliament the general laws now in being for regulating the turnpike-roads in that part of Great Britain called England; and for other purposes," and in the execution of his said office, then and there also being,) did make an assault, and him the said E. F. then and there did beat, wound, and ill-treat, so that his life was greatly despaired of. (*Conclude as in pr. 33. and add a count for a common assault.*)

43. *Indictment for an assault on a boy, with an intent to commit sodomy.*

(*Commencement as in pr. 33. to \*.*) in and upon one J. H. an infant of the age of ten years, did make an assault; and him the said J. H. then and there did beat, wound, and ill-treat, so that his life was greatly despaired of, with an intent that most horrid, detestable, and sodomitical crime (among Christians not to be named) called *buggery*, with the said J. H. against the order of nature, then and there feloniously and wickedly to commit and do, to the great displeasure of Almighty God. (*Conclude as in pr. 33, and add a count for a common assault.*)

44. *Indictment for an assault, with an intent to murder (l).*

(*Commencement as in pr. 33. to \*,*) with a certain drawn

(l) If upon evidence it appear, that the offence (if the party had been killed) would have amounted to manslaughter only, the defendant should be acquitted on the first count.

sword, which he the said A. B. in his right hand then and there had and held, in and upon one S. W. did make an assault, with an intent him the said S. then and there feloniously, wilfully, and of his malice aforethought, to kill and murder. (*Conclusion as in pr. 33. and add a count for a common assault.*)

45. *Indictment for assaulting the driver of a chaise, and with the off-wheel of a cart overturning the chaise.*

(*Commencement as in pr. 33. to the \*,*) in and upon one R. C. in the peace of God and our said lord the king, and in a certain chaise drawn by one horse, in the king's highway, then and there being, did make an assault; and that the said A. B. then and there driving one horse drawing a cart, did then and there, in the highway aforesaid, unlawfully, maliciously, and violently, drive the said horse, so as aforesaid drawing the said cart, to and against the said chaise, and by such driving did then and there, in the highway aforesaid, unlawfully and maliciously force the said cart against the said chaise; and that he the said A. B. with the off-wheel of the said cart, did then and there, in the highway aforesaid, unlawfully and maliciously overturn the said chaise, in which the said R. C. then and there was as aforesaid, by means of which overturning of the chaise aforesaid, he the said R. C. then and there was grievously hurt, bruised, and wounded. (*Conclude as in pr. 33. and add a count for a common assault.*)

46. *Indictment for an assault and beating out an eye.*

(*Commencement as in pr. 33 to \*.*)

In and upon M. the wife of one J. W. violently did

The defendant, a soldier, in marching in file along the Strand, wantonly jostled the prosecutor off the pavement, who thereupon struck him with a small stick which he had in his hand, on which the defendant aimed a blow at the prosecutor with his bayonet fixed on his musquet, and thrust him

under the ear; and Lord Keayon being of opinion, that if death had ensued, it would have been manslaughter only, directed an acquittal on the first count. *Mitton's case*, East. P. C. 411. *Bacon's case*, 1 Lev. 146. 1 Sid. 230. *Staundf.* 17.

make an assault, and her the said M. then and there did beat, wound, and ill-treat, so that her life was greatly despaired of\*; and that she the said A. B. with her right hand, the said M. in and upon the left eye of her the said M. then and there unlawfully, violently, and maliciously did strike; by means whereof, she the said M. then and there the use, sight, and benefit of her said left eye entirely lost, and was deprived of; and also, by means of the premises she the said M. became sick, weak, languid, and distempered, and remained and continued so sick, weak, languid, and distempered for a long time, to wit, from thence until the day of the taking of this inquisition. (*Conclusion as in pr. 33, and add a count for a common assault.*)

*47. For the like, and tearing the hair off the prosecutor's head.*

And also that she the said A. B. did then and there unlawfully and injuriously seize and take hold of the said M. by the hair of her head, and did then and there, with great force, wrath, and violence, pull and drag the said M. by the same, by means whereof she the said A. B. did then and there unlawfully, cruelly, and injuriously pull and tear the hair of the head of her the said M. off by the roots; whereby the head of her the said M. was grievously wounded and hurt, and also she the said M. was put to great pain and torture. (*Conclusion as in pr. 33.*)

*48. Indictment for an assault, and encouraging a dog to bite.*

(*Commencement as in pr. 33.*) And did then and there unlawfully incite, provoke, and encourage a certain dog of and belonging to the said A. B. to bite him the said E. F. by means whereof the same dog did then and there grievously bite the said E. F. in and upon the right leg of him the said E. F.; and the said leg of him the said E. F. was thereby grievously hurt and wounded. (*Conclusion as in pr. 33.*)

*49. Indictment for an assault, and rescuing goods distrained for rent.*

That on, &c. and continually afterwards, until the 25th



day of March, in the year aforesaid, one A. B. did hold of one J. W. a certain room or apartment, with the appurtenances, being part and parcel of a certain messuage or dwelling-house of him the said J. W. situate in the parish of, &c. by virtue of a certain demise thereof made by and from the said J. W. to the said A. B. at and under the rent of ———, reserved and made payable by the said demise to the said J. W. on the said 25th day of March, in the year aforesaid; and that on the said twenty-fifth day of March, in the year aforesaid, the said sum of ——— was due, in arrear, and unpaid for the rent aforesaid, by virtue of the said demise to him the said J. W. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. on the twenty-sixth day of March, in the year aforesaid, did fraudulently and clandestinely convey and carry off and from the said demised premises his goods and chattels; that is to say, one pewter dish, &c. (*here mention the goods,*) of the value of the said sum of ———, with intent to prevent the said J. W. the lessor aforesaid, from distraining the same for the arrears of the said rent so reserved, so in arrear, due, and unpaid, as aforesaid, whereupon the said J. W. afterwards, and within the space of five days next ensuing the said conveying and carrying off the same goods, to wit, on the twenty-eighth day of March, in the year aforesaid, at the parish of ———, in the county aforesaid, did find the said goods and chattels, and the same goods and chattels so found did then and there, in due form of law, seize as a distress for the said rent so due and in arrear as aforesaid, and being also then unpaid; and the said goods and chattels in his custody and possession for the cause aforesaid then and there had; and that the said A. B. late of, &c. labourer, afterwards, to wit, on the same day and year last aforesaid, with force and arms, at the parish last aforesaid, in the county aforesaid, in and upon the said J. W. did make an assault; and the said goods and chattels (so as aforesaid for the cause aforesaid taken and seized) out of the possession and against the will of the said J. W. (*m*) unlawfully and

(*m*) By stat. 8 Ann. ch. 14. *any lessee of any messuages, &c. 2. it is enacted, That in case lands, or tenements, upon the*

injuriously did take, rescue, and carry away (the said sum of ———, so due for rent as aforesaid, being then wholly due and unsatisfied to the said J. W.) (*Conclude as in pr. 33, and add a count for a common assault.*)

50. *Indictment for assaulting a game-keeper in the execution of his duty.*

(*Commencement as in pr. 33. to the \*,*) in the manor of M. into a certain field and close of and belonging to W. S. there lying and being, unlawfully and injuriously did enter, and in and upon one E. F. (then being game-keeper of the said manor duly deputed, authorized, and appointed by G. H. esquire, then and yet being lord of the manor aforesaid,) in the due execution of his duty as a game-keeper of the said manor, then and there also being, did make an assault; and him the said E. F. then and there did beat, wound, and ill-treat, so that his life was greatly despaired of. *Conclusion as in pr. 33. and add a count for a common assault.*)

51. *Indictment for an assault, by casting a person on the ground, and kicking him.*

(*Commencement as in pr. 33.*) and him the said E. F. did then and there beat, bruise, wound, and ill-treat, so

demise whereof any rents shall be reserved or made payable, shall fraudulently and clandestinely convey and carry off from such demised premises his goods or chattels, with *intent* to prevent the landlord or lessor from distraining the same for arrears of such rent reserved as aforesaid, it shall and may be lawful for such lessor or landlord, or any person by him for that purpose lawfully empowered, within the space of five days next ensuing such conveying away or carrying off

such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of such rent, and the same to sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord in and upon such demised premises, for such arrears of rent; and by the stat. 11 Geo. 2. c. 19. s. 1. the time is enlarged to thirty days.

that his life was greatly despaired of; and that the said A. B. with both his hands then and there violently cast, flung, and threw the said E. F. to, upon, and against the ground, and him the said E. F. in and upon his head, neck, breast, back, sides, and other parts of his body, with both the feet of him the said A. B. then and there violently and grievously did kick, strike, and beat, giving to the said E. F. then and there, as well by such flinging, casting, and throwing of him the said E. F. as also by such kicking, striking, and beating of the said E. F. as aforesaid, in and upon the head, neck, breast, sides, back, and other parts of the body of him the said E. F. divers bruises, hurts, and wounds. (*Conclude as in pr. 33. and add a count for a common assault.*)

*52. Indictment for an assault, and casting into a pond of water with intent to suffocate.*

(*Commencement as in pr. 33.*)

And him the said G. M. then and there did beat, bruise, wound, and ill-treat, so that his life was greatly despaired of; and that the said A. B. with a certain large stick, which he the said A. B. in his right hand then and there had and held, then and there gave and struck the said G. M. many violent and grievous blows and strokes in and upon his head, neck, arms, breast, and other parts of his body, and did with both the hands of him the said A. B. then and there unlawfully, wickedly, maliciously, and violently, cast, push, fling, and throw the said G. M. into a certain pond, there situate and being, wherein there then was a large quantity of filthy water and mud, and did then and there keep, press down, and confine the said G. M. in and under the said water and mud for a long space of time, to wit, for the space of five minutes then next following, with intention him the said G. M. then and there feloniously, wilfully, and of his malice aforethought, to suffocate and drown in the said water and mud, and him the said G. M. by means thereof to kill and murder; by means of which said casting, pushing, flinging, and throwing of him the said G. M. into the said pond as aforesaid, and keeping, pressing down, and confining the said G. M. in and under the said water and mud as aforesaid, he the said G. M. was then and there grievously hurt and bruised in his body, and in great danger of being suffocated and drowned in the

said water and mud there: (*conclusion as in pr. 33.* —*Second count: commencement as in pr. 33.*) and him the said G. M. then and there did beat, bruise, wound, and ill-treat, so that his life was greatly despaired of; and that the said A. B. with a certain large stick, which he the said A. B. in his right hand then and there had and held, gave and struck the said G. M. many violent blows and strokes in and upon his head, breast, sides, back, and other parts of his body, and thereby greatly cut, bruised, and wounded the head, breast, sides, back, and other parts of the body of the said G. M. by means of which said last-mentioned blows and strokes he the said G. M. became sick, weak, and distempered, and remained and continued so sick, weak, and distempered, for a long time, to wit, from the time of giving and striking the same until the day of taking this inquisition. *Conclusion as in pr. 33. and add a count for a common assault.*

53. *Indictment for a riot, and assault on a surveyor of a turnpike-road in the execution of his office, and for preventing the labourers from working.*

That R. W. late of the parish of N. in the county of M. labourer, C. W. late of the same place, labourer, &c. (*the names and additions of the rioters who are known*) and divers other evil-disposed persons, to the number of forty and more, to the jurors aforesaid as yet unknown, being rioters, routers, and disturbers of the peace of our lord the now king, and not regarding the laws and statutes of this kingdom, on, &c. with force and arms, at, &c. unlawfully, riotously, routously, and tumultously did assemble and meet together\*, to disturb the peace of our said lord the king, and to hinder and retard the due execution of a certain act of parliament made and passed in the thirty-first year of the reign of his late majesty George the second, late king of England, intituled (n) “An act for repairing the road from the village of M. to the bridge-foot at the town of C. in the counties of M. and Gloucester,” and to hinder, oppose, and stop certain workmen then employed in and about the working and making a certain turnpike-road, in pursuance of the said act of

(n) Care must be taken to set out the proper title of the act.

parliament, in and through a certain place in the parish aforesaid, called the marshes; and that, being so assembled and met together as aforesaid, they the said R. W. &c. (*the names of all the rioters who are known*) together with the said other evil-disposed persons, to the jurors aforesaid as yet unknown, then and there unlawfully, riotously, routously, and tumultuously did hinder, oppose, and stop the said workmen, so employed as aforesaid, from proceeding in and performing the said work, and then and there unlawfully, riotously, routously, and maliciously did make an assault upon one R. T. (then and there being a surveyor of the said turnpike-road, within the district of N. in the said act mentioned, duly appointed by (o) nine at least of the trustees acting within the said district, in pursuance of the said act of parliament, at a meeting of the said trustees then lately before held within the said district, under their hands and seals, for the viewing the condition of the said roads within the said district to be made, repaired, and amended, in pursuance of the said act, and to see that the same were repaired, and for other services in the said act mentioned and expressed) in the due execution and performance of his said office then and there being, and him the said R. T. then and there unlawfully, riotously, routously, and maliciously did beat, bruise, wound, and ill-treat, so that his life was greatly despaired of; and other wrongs to the said R. T. then and there unlawfully, riotously, and routously did, to the great damage, danger, and fear of the said R. T. to the great hindrance and obstruction of the said workmen in the execution and performance of the said work, in contempt, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said R. W. &c. (*as before*) afterwards, to wit, on, &c. with force and arms, at the parish aforesaid, in the county of M. aforesaid, in and upon the said R. T. (then and there being surveyor of the said turnpike-road within the district of N. aforesaid, duly appointed according to the directions of the above-mentioned act) in the due execution and performance of his said office, then and there being, did make an

(o) As the words of the act may be; but it does not appear to be necessary to set out the appointments specially. See p. 151, 152. R. v. Hollond, 5 T. R. 623. 4 T. R. 366. and see the second count.

assault, and him the said R. T. did then and there beat, bruise, wound, and ill-treat, so that his life was greatly despaired of. (*Conclude as in the first count, and add a count for a common assault.*)

54. *Indictment against J. W. and his wife, for cruelly beating and ill-treating a parish apprentice, and keeping her from necessary food.*

(*Commencement, as in pr. 33. to the \*, stating a joint assault.*) In and upon one E. O. then and there being an infant of tender years, that is to say, of the age of thirteen years or thereabouts, and then and there being the servant of the said J. W. did make an assault, and with certain rods, whips, sticks, and cords, which they the said J. W. and H. then and there had and held in their hands, her the said E. O. violently, cruelly, and immoderately did beat, scourge, and strike, and did then and there pull and strip, and did force and compel the said E. O. to pull and strip, from off the body of her the said E. O. certain cloaths and wearing apparel wherewith the said E. O. was then and there clothed and covered, so that the said E. O. was then and there naked and uncovered, and her the said E. O. as well whilst she was so covered and clothed with the said cloaths and wearing apparel, as whilst she was so naked and uncovered, did cruelly and barbarously force and compel to work and labour violently, immoderately, and beyond her strength, in the business of the said J. W. for the space of thirteen hours then next following, and the said E. O. so working and labouring as aforesaid, did then and there shut up, confine, and keep in a certain room there for all the time aforesaid, without giving or affording to her the said E. O. or permitting her to have sufficient meat, drink, and food, for her nourishment and support during that time; and such assaulting, beating, scourging, striking, and otherwise ill-treating her the said E. O. in manner and form aforesaid they the said J. W. and H. at fifty other different times, on fifty other different days then next following, at the parish aforesaid, did barbarously, cruelly, and inhumanly repeat and reiterate, in, upon, towards, and against the said E. O. so being the servant of the said J. W. as aforesaid, with an intent her the said E. O. then and there feloniously, wilfully, and of their malice aforethought, to kill and murder. (*Conclusion as in pr. 33.*)

(*Second count, commencement as in pr. 33.*) In and upon the said E. O. then and there being such infant, and the servant of the said J. W. as aforesaid, in the peace of God and our said lord the king then and there also being, did make an assault, and did then and there, by and with divers menaces, barbarously, wickedly, cruelly, and inhumanly force, compel, and oblige the said E. O. to go into a certain rivulet there, (she the said E. O. then and there being naked, and the water of the said rivulet then and there being frozen and very cold,) and did cruelly and barbarously force and compel the said E. O. so being naked in the said rivulet, to wash her body in the water of the said rivulet, to the great pain and torture of the said E. O. and to the great damage and impoverishment of her health and strength of body, with an intent, &c. (*as in the last count.*)

(*Third count, commencement as in pr. 33.*) In and upon the said E. O. then and there being such infant, and the servant of the said J. W. as aforesaid, and in the peace of God and our said lord the king then and there also being, did make an assault, and did then and there most wickedly, barbarously, and cruelly, take and hold the said E. O. so near to a certain large fire, then burning there, that the said E. O. thereby became and was grievously burnt, scorched, and hurt, and did then and there dash, fling, push, and throw the said E. O. with great force and violence, to, upon, and against the ground there, and thereby greatly hurt, crushed, bruised, and wounded the said E. O. in and upon her head, neck, arms, sides, back, and other parts of her body, whereby the said E. O. became sick, weak, languid, and distempered, and remained and continued so sick, weak, languid, and distempered for a long time, to wit, from thence until the day of taking of this inquisition. (*Conclusion as in pr. 33.*)

55. *Indictment for entering a public house, making a noise therein, and threatening bodily harm to the owner.*

(*Commencement as in pr. 33 to the \*.*) Unlawfully, did enter into the dwelling-house of one R. N. there situate, (the same being a public victualling-house, and in which divers liege subjects of our said lord the king were then and there peaceably met and assembled) with intention to disturb the peace of our said lord the king, and that the said A. B. so being in the said dwelling-house, did then

and there unlawfully, wilfully, injuriously, and obstinately, remain there for a long space of time, that is to say, for the space of one hour and more, without the license and against the will of the said R. N. and did then and there unlawfully, obstinately, and injuriously refuse to depart and go away from and out of the said dwelling-house, upon the reasonable request of the said R. N. then and there made to him for that purpose; and that the said A. B. did then and there unlawfully, vehemently, and turbulently menace and threaten great bodily hurt to the said R. N. then and there being in his dwelling-house, and did then and there make a great noise in disturbance of the peace of our said lord the king, and greatly misbehave himself in the same dwelling-house. (*Conclusion as in pr. 33, and add a count for a common assault.*)

56. *Indictment for an assault and riot in a dwelling-house, and removing goods.*

(*Commencement as in pr. 53, to the \*.*) To disturb the peace of our said lord the king, and being so assembled and met together, the dwelling-house of one J. P. spinster, there situate, then and there unlawfully, riotously, and routously did break and enter, and in and upon the said J. P. in the said dwelling-house then and there being, unlawfully, riotously, and routously did make an assault, and her the said J. P. then and there unlawfully, riotously, and routously did beat, bruise, wound, and ill-treat, so that her life was greatly despaired of, and did then and there unlawfully, riotously, and routously put and force the said J. P. from and out of the said dwelling-house, and did then and there unlawfully, riotously, and routously put, cast, fling, and throw divers goods and chattels, to wit, six wooden chairs and five pewter plates of her the said J. P. of the value of forty shillings, then being in the said dwelling-house, from and out of the same, and thereby greatly broke, damaged, and spoiled the said goods and chattels; and other wrongs to the said J. P. then and there unlawfully, riotously, and routously did, to the great damage of the said J. P. against the peace, &c. (*Add a count for a common assault.*)



57. *For an assault on a deputy goaler, in the execution of his office.*

That A. B. late of the castle of Lancaster, in the county of Lancaster, labourer, on —————, with force and arms, at the castle of Lancaster, at Lancaster aforesaid, in the said county, in and upon one J. C. then and there being deputy keeper of his majesty's gaol of the castle of Lancaster, and having the custody of divers persons confined in the said gaol, and then and there being in the due execution of his said duty and office of deputy keeper as aforesaid, did make an assault, and him the said J. C. did beat, bruise, wound, and ill-treat, so that his life then and there was greatly despaired of, and other wrongs to the said J. C. then and there did, to the great damage of the said J. C. and against the peace, &c.

58. *For an assault on an excise officer (o).*

(Commence as in *pr. 33. to the \**.) In and upon one C. D. then and there being an officer of our lord the king, in the service of the excise of our said lord the king, duly constituted and appointed, and then and there being on shore in the due execution of his office and duty as such officer as aforesaid, in seizing and securing, to and for the use of our said lord the king, a large quantity, to wit, (*set out the goods*) which were then and there liable to be seized by the said C. D. as such officer as aforesaid, unlawfully and violently did make an assault, and him the said C. D. so being then and there on shore, in the due execution of his said office and duty, in manner aforesaid, unlawfully and forcibly did hinder, oppose, and obstruct, to wit, at, &c. and other wrongs, &c. to the great damage, &c. against the form of the *statute*, &c. and against the peace, &c.

(o) *R. v. Brady, Leach, 949.* cise officers, as well as to custom-house officers and officers of the navy.  
on the stat. 24 G. 3. c. 47.  
s. 15. In this case it was holden, that the statute extends to ex-

59. *Indictment for an assault, false imprisonment, and rescue.*

That the mayor and senior bailiff of the town and county of the town of Poole, the judges of the weekly court of record, of the said town and county, on, &c. at, &c. by their writ issued out of the said court, bearing date, &c. directed to W. C. and J. Brown, *serjeants at mace of the said town and county (p)*, did command them to take B. W. if he should be found in their bailiwick, and keep him safely, &c. so that they might have his body before the mayor, &c. on, &c. to answer J. S. in a plea of trespass on the case, which same writ, on, &c. at, &c. within the jurisdiction of the said court, was delivered to the said J. Brown, *one of the serjeants at mace of the said town and county, to be executed (p)* in due form of law; by virtue of which said writ, the said J. B. afterwards, &c. on, &c. at, &c. at the town and county aforesaid, and within the jurisdiction of the court aforesaid, was proceeding to arrest the said B. W. according to the exigency of the said writ; and that the said B. W. (*the defendant*) late of, &c. labourer, with others unknown, afterwards, to wit, on, &c. with force and arms, in the town and county aforesaid, and within the jurisdiction of the said court, in and upon the said J. B. then and there being one of the serjeants at mace aforesaid, and in the due execution of his said office, did make an assault, and also imprison him; and that the said A. B. and the said others unknown, with force and arms,

(p) This indictment was holden to be defective, for not averring that J. B. was the proper officer of the court. 5 East, 304. *R. v. Osmer*. It was also objected, that it did not appear that an affidavit had been made of a debt to the amount of 10*l.*; and that the sum sworn to was indorsed upon the writ, which is rendered necessary by the stat. 12

G. 1. c. 29. and 19 G. 3. c. 20. And the court held, that judgment could not be given as for a common assault and imprisonment upon a general verdict of guilty; for taking the whole count together, the jury had found that there was an assault and imprisonment, but committed under circumstances which justified the defendant.

&c. did then and there violently prevent the said J. B. from arresting the said B. W. as by the same writ he was commanded, &c. (*Conclusion as in pr. 33.*)

60. *Indictment under the stat. 9 G. 1. c. 22. (q) for shooting at a person in his dwelling-house.*

That A. B. late of, &c. labourer, being an ill-designing and disorderly (*r*) person, of a wicked and malicious disposition, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, on, &c. with force and arms, at, &c. in the county aforesaid (*s*), with a certain gun, loaded with gun-

(*q*) This act enacts, that "if any person or persons shall wilfully and maliciously shoot at any person in any dwelling-house, or other place, or shall forcibly rescue any person being lawfully in custody of any officer, or other person, for such offence; or if any person or persons shall, by gift or promise of money, or other reward, procure any subject to join him or them in any such unlawful act, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and suffer death without benefit of clergy." See 43 G. 3. c. 58. and the indictments founded upon it, *infra*.

(*r*) These words are used in the preamble of the statute, but it seems to be unnecessary to introduce them into the indictment, since they are no part of the description of the offence.

(*s*) The offender may be tried in any county, see p. 13, but the offence ought to be laid in the true county, see p. 19.

Where one actually shoots, and others are present aiding and abetting, it does not appear to be necessary to introduce more than one count, since it is clear, that all may be charged as principals. See p. 31. 81. the Coalheavers' case, Leach, 76. 3 T. R. 105.

In Wills's case, East. P. C. 414. Kent, Sp. Ass. 1786. the first count charged, that the prisoner, and divers others, to the jurors unknown, shot at J. P.; the second count alleged, that a person unknown wilfully, &c. shot at J. P.; and that the prisoner was present aiding and abetting, &c. and alleged in conclusion, that both committed the felony. Mr. J. Ashurst informed the jury, that if they were of opinion, that the prisoner went in confederacy with others to make an attack upon Mr. M'Ullock's house, and came armed with an intention to oppose all resistance; and that, in the prosecution of that purpose, the prisoner, or any of his associates, shot at the

*powder and a leaden bullet*, which he the said A. B. in both his hands then and there had and held, he the said A. B. with the said gun, so being loaded as aforesaid, did then and there *wilfully, maliciously (t)*, unlawfully, knowingly, and feloniously shoot at C. D. (the said C. D. then and there being in his own dwelling-house *u*), against the form of the statute, &c. and against the peace, &c. (*Add a count omitting the words "loaded with gunpowder, &c."*)

An indictment charging several with a single shooting may be framed thus (x).

That A. B. late of ———, in the county of ———, labourer, C. D. late of, &c. labourer, E. F. late of, &c. labourer, being evil, designing, and disorderly persons, and of wicked and malicious minds and dispositions, on, &c. with force and arms, at, &c. in and upon one G. H. did unlawfully, wilfully, maliciously, and feloniously, make an assault, and with a certain gun, loaded with gunpowder, and divers leaden bullets, to wit, three leaden bullets, unlawfully, wilfully, maliciously, and feloniously, did then and there shoot at the said S. P. against the form of the statute, &c. and against the peace, &c.

61. *Indictment of felony, by slitting a nose, and against the aider and abettor.*

(Commencement as in *pr.* 33. to the \*, stating the assault to have been made jointly.) Contriving and in-

prosecutor; then they should find the prisoner guilty. And the judges were of opinion, that the direction was right, and that the Coalheavers' case was good law.

(t) These words are essential, see p. 212.

(u) The words of the statute are, *in any dwelling-house or in other place*, and therefore this allegation is unnecessary. In *Duror's* case, p. 178. the owner's name was alleged, and a variance from it in evidence was holden to be fatal. But

in prosecutions for robbery, it has been holden, that such an averment might be rejected as surplusage, see p. 178; and probably the same was holden upon an indictment under this statute. In *Harris's* case, *East. P. C.* 415. on 'an indictment under this act it was objected, that the prisoner, having fired at the party within his own house, was not within the statute; but the judges held, that the objection was unfounded.

(x) See the *Coalheavers' case*, *Leach*, 76.

tending one E. C. then and yet being a subject of our said lord the king, to maim and disfigure, at, &c. with force and arms, in and upon the said E. C. on purpose, and of their malice aforethought, and by laying in wait, unlawfully and feloniously did make an assault, and that the said J. W. with a certain iron bill, of the value of one penny, which he the said J. W. in his right hand then and there had and held, the nose of the said E. C. on purpose, and of his malice aforethought, and by lying in wait, then and there unlawfully and feloniously did slit, with intention the said E. C. in so doing, in manner aforesaid, to maim and disfigure; and that the aforesaid A. C. at the time the aforesaid felony, by the said J. W. in manner and form aforesaid, was done and committed, to wit, on, &c. at, &c. with force and arms, on purpose, and of his malice aforethought, and by lying in wait, unlawfully and feloniously was present, knowing of and privy to the committing of the said felony, aiding, and abetting the said J. W. in the felony aforesaid, in manner and form aforesaid done and committed; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. W. and A. C. on, &c. at, &c. with force and arms, on purpose, and of their malice aforethought, and by lying in wait, the felony aforesaid, in form aforesaid, unlawfully and feloniously did do and commit, and each of them did do and commit, against the peace, &c. and against the form, &c.

By stat. 22 & 23 Car. 2. c. 1. s. 7. if any person or persons, from and after the 24th day of June, in the year of our Lord 1671, on purpose, and of malice forethought, and by lying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject of his majesty, with intention in so doing to maim or disfigure, in any the manners before mentioned, such his majesty's subject, that then, and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, (knowing of and privy to the offence aforesaid,) shall be guilty of felony, without benefit of clergy.

62. *For striking a person with a weapon in a church-yard (a).*

(Commencement as in pr. 33 to the \*.) In a certain churchyard belonging to the same parish, and there situate, maliciously did strike one E. F. spinster, with a certain weapon made of iron and steel, called a sword, which he the said A. B. then and there had and held in his right hand, against the form, &c. and against the peace, &c.

(If the weapon be drawn with intent to strike another, then say, with his right hand did draw a certain weapon called a hanger, to the intent to strike one M. P. with the same weapon, against the form of the statute, &c. and against, &c. as above. (But if a person draw a weapon to the intent to strike, and actually strike, charge the drawing with intent, &c. as above, and add a count for the striking as in the first precedent.)

(a) By stat. 5 & 6 Edw. 6. c. 4. s. 3. if any person shall maliciously strike another with any weapon, in any church or church-yard, or shall draw any weapon in any church or church-yard to the intent to strike another with the same weapon, that then every person so offending, and thereof being convicted by verdict of twelve men, or by his own confession, or by two lawful witnesses, before the justices of assize, justices of oyer and terminer, or justices of peace in their sessions, by force of this act, shall be adjudged, by the same jus-

tices before whom such person shall be convicted, to have one of his ears cut off: and if the person or persons so offending have none\* ears, whereby he or they shall receive such punishment as is before declared, that then he or they be marked and burned in the cheek with an hot iron having the letter F. whereby he or they may be known to be fray-makers and fighters; and besides, that every such person to be and stand *ipso facto* excommunicated, and be excluded from the fellowship and company of Christ's congregation,

\* So in stat.

63. *For an assault with intent to rob, under the stat. 7 G. 2. c. 21 (b).*

(Commencement as in *pr. 1.*) In and upon C. D. *unlawfully, maliciously, and feloniously*, did make an assault,

(b) The stat. 7 G. 2. c. 21. enacts, "that if any person or persons shall, with any offensive weapon or instrument, unlawfully and maliciously assault, or shall by menaces, or in or by any forcible or violent manner, demand any money, goods, or chattels, of or from any other person or persons, with a felonious intent to rob or commit robbery upon such person or persons, that then such person so offending, and being thereof lawfully convicted, shall be adjudged guilty of felony, and be liable to be transported as in cases of felony." The act is in the disjunctive, therefore the indictment must allege an assault with an offensive weapon, with an intent, &c. or that the defendant did, by menaces, &c. demand money, goods, or chattels with a like intent; and if it do not, will be defective. *R. v. Jackson and Randall*, Leach, 303. *R. v. Remnant*, 5 T. R. 169. *Pegges's case*, East. P. C. 420.

In *Parfait's case*, Leach, 23. East. P. C. 416. the indictment charged an assault with a pistol with intent to rob; it appeared that the defendant did not make any demand or motion, or offer to demand the prisoner's money, but only held a pistol in his hand towards

the prosecutor who was on the coach-box, and bade him stop; and Lord C. J. Willes and Chappel, J. are said to have holden that the case was not within the act, because there was no demand. But, as Mr. East, in his Pleas of the Crown, observes, the words of the act are in the disjunctive, and where the indictment is framed upon the first branch of it a demand is unnecessary, and it is for the jury to decide with what intent the assault was made. The defendant, Thomas, (Leach, 372.) was indicted for a felonious assault on J. Lowe, with a pistol, with intent to rob him; it appeared that the prosecutor was in a chaise, and the prisoner, after following it for some time, presented a pistol at the post-boy, bidding him stop, with many violent oaths, but making no demand of money; the carriage stopped, but the prisoner, perceiving that he was pursued, immediately rode away; the court held that the evidence was not sufficient, for the charge was not of an assault on the postillion with intent to rob him, but for an assault on Mr. Lowe with intent to rob him, of which there was no evidence; and upon another indictment against the same defendant for an assault on *Dring*

with a certain offensive weapon, to wit, a (c) pistol, which he the said A. B. in his right hand then and there had and held, with a felonious intent the monies of the said C. D. from the person and against the will of the said C. D. feloniously and *violently* (d) to steal, take, and carry away, against the form, &c. and against the peace, &c.

**64. For a felonious assault with intent to spoil cloaths, &c.**

(Commence as in *pr.* 1.) In a public street and highway there, called ———, in and upon one E. M. spinster, in the said public street and highway, then and there being, *wilfully, maliciously, and feloniously* did make an assault, with an intent to tear, spoil, cut, and deface the garments and cloaths of her the said E. M. and, with force and arms, did, in the said public street and highway, *then and there* (e) wilfully, maliciously, and feloniously tear, spoil, cut, and deface one printed linen gown of the value of thirty shillings, of the goods and chattels of the said E. M. being part of the garments and

the postillion, he was acquitted upon the same evidence; since it appeared that the intent was not to rob the post-boy, for when he presented the pistol to him, and bade him stop, he made no demand upon him, but went up to the person in the chaise, East. P. C. 418. In the case of *Trusty v. Howard*, Sess. Pap. 735. the defendants were indicted for a felonious assault with an offensive weapon, with intent to rob; it appeared that one of them, presenting a pistol to the prosecutor, bade him stop, which he did, but called out for assistance; on this, the prisoners threatened to blow his brains out if he called out any more, which he nevertheless con-

tinued to do, and the men were taken, and, though no demand of money was made they were convicted and transported.

(c) In *Sharwin's* case, East. P. C. 421. it was holden that an allegation of an assault with an offensive weapon called a wooden staff, was satisfied by evidence of an assault with a stone, see p. 85.

(d) In *Monteth's* case the indictment was holden to be defective for omitting this word. Leach, 890. Sess. Pap. 1300. and 1325. East. P. C. 420. for the indictment must allege an intent to rob, which always includes force and *violence*.

(e) It must appear that the assault and spoiling were continuous, see p. 55.



cloaths of her the said E. M. on her person then and there being in wear, against the form, &c. and against the peace, &c. (f).

By stat. 6 Geo. 1. c. 23. s. 11. it is enacted, that if any person or persons shall, at any time or times, wilfully and maliciously assault any person or persons, in the public streets or highways, with an intent to tear, spoil, cut, burn, or deface the garments and cloaths of such person or persons, that then all and every such person or persons so offending, being thereof lawfully convicted, shall be adjudged to be guilty of felony, and every such felon shall be subject and liable to like pains and penalties as in cases of felony; and the courts by and before whom he, she, or they shall be tried, shall have full power and authority of transporting such felons for the space of seven years.

*65. Indictment for feloniously assaulting a privy counsellor in the execution of his office (g).*

(Commencement as in *pr.* 1.) In and upon the right honourable Sir E. H. knight, one of the privy counsellors of our said lord the king, and in the due execution of his said office in council then and there being, feloniously did make an assault, and him the said Sir E. H. did then and there feloniously strike and wound, against the form, &c. and against the peace, &c.

(f) It has been holden, that to support an indictment under this statute, it must appear that the primary intention of the defendant was to injure the cloaths, and that if his intention was to injure the person the case is not within the statute, *R. v. Williams, Leach*, 426.; but *qu.* as to the principle of this opinion, and see *R. v. Coke and Woodburn*, 6 St. Tr. 874.

is enacted, that if any person shall attempt to kill, or unlawfully assault, strike, or wound any of her majesty's privy counsel, in the execution of his office in council, or in any committee of council, being convicted thereof in due form of law, he is thereby declared to be a felon, and shall suffer death, as in cases of felony, without benefit of clergy.

The occasion of the act was this, Robert Harley, esq. (after-

(g) By stat. 9 Ann. c. 16. it

66. *For challenging to fight, on account (h) of money won at play, under the stat. 9 Ann. c. 14 (i).*

(Commencement as in *pr.* 33.) And then and there unlawfully and maliciously did challenge C. D. a peaceable subject of our said lord the king, to fight with him the said A. B. on account of money then and there won by the said C. D. (k) of him the said A. B. by then and there gaming and playing at dice with the said A. B. *at a certain game called hazard (l)*, to the great damage of the said C. D. against the form of the statute, &c. and against the peace, &c. (2nd count, commencement as in *pr.* 33.) And then and there unlawfully and maliciously did provoke C. D. to fight with him the said A. B.

wards Earl of Oxford) was stabbed by Anthony Guiscard, who was then under examination before a committee of the privy counsel.

(h) The prosecutor lost his money to Randall and others, the defendants; they proposed to depart; he objected, wishing to have an opportunity of recovering his money, upon which they committed the assault. Buller, J. was of opinion, that the game being over before the assault began, it could not be said to have arisen out of the game, but from what the prosecutor had said to the defendants; and that it was necessary, in order to bring a case within the statute, that the assault should arise *out of the play* and during *the time of playing*. East. P. C. 423. Brist. Summ. Ass. 1787.

(i) Which enacts, that if any person or persons whatsoever, shall assault and beat, or challenge or provoke to fight, any other person or persons whatsoever, upon account of any

money won by gaming, playing, or betting at any of the games aforesaid, (viz. cards, dice, tennis, bowls, tables, or other game or games whatsoever,) such person or persons, &c. shall, being thereof lawfully convicted upon an indictment or information to be exhibited against him for that purpose, forfeit to her majesty, &c. all his goods and chattels and personal estate whatsoever, and shall also suffer imprisonment, without bail or mainprize, in the common gaol of the county where such conviction shall be had, during the term of two years.

(k) In order to support the indictment it does not appear to be necessary that the money should have been won by the prosecutor, or that it should be alleged by whom the money was won.

(l) The game seems to be immaterial, therefore this allegation had better be omitted.

on account of money then and there won by the said C. D. from the said A. B. by gaming and playing at dice, to the great damage, &c. *against the form, &c. and against the peace, &c.*

*Indictment for the same, alleging an assault and beating.*

(*Commencement as in pr. 33.*) And then and there did beat the said C. D. on account of money then and there won by the said C. D. from him the said A. B. by then and there gaming and playing at dice, to the great damage, &c. (*conclude as in the last precedent.*)

67. *For an assault, against the stat. 36 G. 3. c. 9 (m).*

(*Commencement as in pr. 1.*) In and upon one E. F. did wilfully and maliciously make an assault, and him the said E. F. did then and there wilfully and maliciously beat, with intent to deter and hinder him the said E. F. from then and there buying corn, at the parish aforesaid in the county aforesaid. (*Conclude as before.*)

68. *For an assault, &c. with intent to stop grain, &c.*

In and upon one E. F. who was then and there driving a certain cart loaded with wheat, unlawfully and maliciously did make an assault, and him the said E. F. did then and there unlawfully and maliciously beat, with intent to stop such wheat. (*Conclusion as before, and add a count for a common assault.*)

(*m*) If any person shall wilfully and maliciously beat, wound, or use any other violence to or upon any person or persons, with intent to deter him or them from buying of corn or grain in any market or other place within this kingdom, or unlawfully beat or wound the driver of any wagon, cart, or other carriage or horse loaded with wheat, flour, meal, malt, or other grain, with intent to stop such wheat, &c. such person, being thereof lawfully convicted before any two or more justices of the peace of the county, &c. or before the justices of the peace in open sessions, shall be sent to the common gaol or house of correction, there to continue and be kept to hard labour, not less than one nor exceeding three months.

A person so offending a second time, and being lawfully convicted, to be deemed guilty of felony, and to be transported for fourteen years.

69. *Indictment for ravishing a woman.*

(*Commencement as in pr. 1.*) In and upon one A. P. spinster, in the peace of God and our said lord the king then and there being, violently and feloniously did make an assault, and her the said A. P. *against the will (n)* of her the said A. P. then and there feloniously did *ravish (o)*, and carnally know *(p)*, against the form *(q)* of the statute, &c. and against the peace, &c.

70. *Indictment for carnally knowing and abusing a female child under the age of ten years (r).*

(*Commencement as in pr. 1.*) In and upon one E. F.

(*n*) The absence of previous consent is a material ingredient in the offence, as described in 13 E. 1. stat. 1. c. 24. see below.

(*o*) The word *rapuit* is essential, and is not supplied by the words *carnaliter cognovit*, see p. 72.

(*p*) But the words *carnaliter cognovit* do not appear to be essential, 2 Haw. c. 25. s. 56. 11 H. 4. 14. See Staun. 81. Co. Litt. 137. 2 Ins. 180. where Lord Coke says, that *rapere* legally signifies as much as *carnaliter cognoscere*; and if so, the latter allegation appears to be unnecessary, for the use of the latter words is to specify the nature of the crime rather than any means or circumstances of the particular case. But it would not be prudent to omit these words.

(*q*) The indictment usually concludes, against the form of the statute. But rape was anciently a capital felony. 1 Ins.

s. 190. 2 Ins. 180. 433. 1 Hale, 627, 8. 1 Haw. c. 41. s. 7. 4 Bl. Comm. 210. 212.

By the stat. of West. 3 E. 1. c. 13. the offence was reduced to a trespass; but by stat. of West. 2. it was again made felony, the stat. enacting, that ravishment without any consent before or after, and ravishment with force without consent, should be punished with judgment of life and member. Since, therefore, an indictment at the present day rests upon this statute, it would not be proper to omit the conclusion *contra formam*, 1 Hale, 632. Dy. 304. 6 H. 7. 5.; at all events this conclusion is necessary in case of an appeal. 2 Haw. c. 23. s. 6.

Principals in the 1st and 2d degree are ousted of their clergy by the stat. 18 Eliz. c. 7. and 3 W. & M. c. 9.

(*r*) The stat. 18 Eliz. c. 7. s. 4. takes away the benefit of clergy from such as shall un-

spinster, a woman child under the age of ten years, to wit, of the age of nine years and upwards, feloniously did make an assault, and her the said E. F. then and there wickedly, unlawfully, and feloniously, did carnally know and abuse, against the form of the statute, &c. and against the peace, &c.

71. *Indictment of felony for taking a woman having substance, &c. against her will, under the stat. 3 H. 7. c. 2 (q).*

(Commencement as in *pr. 1 (r).*) In and upon one M. W. spinster, then and yet being under the age of fourteen years, and a maid, and only daughter and heir of P. W. esquire, then lately deceased, she the said M. W. then and there having substance (s) in moveable goods to the value of one thousand pounds, of lawful money of Great Britain, and in lauds and tenements to the value of fifteen hundred pounds by the year, of like lawful money, did make an assault, and her the said M. then and there did put in great danger of her life, and her the said M. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, feloniously, and against the will of her the said M. violently did take, force, and convey away, with intention that he the said A. B. for lucre (t), and the sake of such her substance, feloniously should marry, and have the said M. to wife; and that the said A. B. afterwards, to wit, on, &c. by the assent, procurement, and abetment of the said A. M., J. J., and C. the wife of F. C. late of, &c. gentleman, and W. C. late of

lawfully and carnally know and abuse any woman child under the age of ten years.

Mr. East, E. P. C. 448. is of opinion that the word ravish ought to be omitted, because the crime is created by stat. 18 Eliz.; but that stat. appears, from its terms, to be declaratory of the law, affirming that it extended to that particular case, and if so the averment is essential.

(q) This is essential, 1 Haw. 660. 1 Haw. c. 42. s. 34.

(r) As to the venue, see p. 2.

(s) The indictment must either allege that the female was an heiress, or that she had substance in goods and moveables, or in lands and tenements. 1 Hale, 660. 1 Haw. c. 42. s. 34. 3 Ins. 61.

(t) This allegation does not appear to be essential, but *Ld. Hale* says it is safest to use these words, see p. 167. n. (f).

the same parish and county, clerk, with force and arms, at, &c. feloniously, and for lucre of the said substance of the said W. M. did marry (x), and had the said W. M. to wife, against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. M., J. J., C., the wife of F. C. and W. C. on the said fourteenth day of November, in the year aforesaid, at, &c. in the county of ———, with force and arms, knowingly and feloniously were assisting, aiding, procuring, assenting, abetting, and maintaining the aforesaid A. B. in doing and committing the felony aforesaid, against the form of the statute, &c. and against the peace (y), &c.

(x) It must either be alleged that she was married to the defendant or to some one by his procurement, or that she was defiled. 1 Hale, 660. 3 Ins. 61.

(y) By stat. 3 Hen. 7. c. 2. (reciting, where women, as well maidens as widows and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, for the lucre of such substances been oftentimes taken by mis-doers, contrary to their will, and after married to such mis-doers, or to other by their assent, or defiled, to the great displeasure of God, and contrary to the king's laws, and disparagements of the said women, and utter heaviness and discomfort of their friends, and to the evil *example* of all others;) it is therefore ordained, established, and enacted, that what person or persons from henceforth that taketh any woman so against her will unlawfully, that is to

say, maid, widow, or wife, that such taking, procuring, and abetting the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, be felony; and that such mis-doers, takers, and procurators to the same, and *receitors*, knowing the said offence in form aforesaid, be henceforth reputed and judged as principals: provided alway, that this act extend not to any person taking any woman, only claiming her as his ward or bond-woman.

By stat. 39 Eliz. c. 9. s. 1. clergy is taken away from persons who shall offend against the above statute.

This act of Elizabeth extends only to those who shall be principals or procurors, or accessories before such offence committed, s. 2.

By stat. 4 & 5 Ph. & M. c. 8. s. 3. if any person, above the age of fourteen years, shall unlawfully take or convey, or cause to be taken or conveyed, any maid or woman child un-

72. *Indictment for having two wives at one and the same time, against the stat. 1 J. 1. c. 11 (z).*

(Commencement as in *pr. 1.*) At the parish of N. (a), in the county of M. (b), did marry one C. D. spinster, and her the said C. D. then and there had for his wife; and that the said A. B. afterwards, to wit, on, &c. with force and arms, at the parish of S. M. in the said county of M. feloniously did marry and take to wife one

married, being within the age of sixteen years, out of or from the possession, and against the will, of her father, mother, or guardian, he shall suffer two years imprisonment, or pay such fine as shall be assessed by the court.

§ 4. If any person shall so take away, or cause to be taken away, and deflower any such maid or woman child, or shall, against the will or knowledge of the father, or, if he be dead, of the mother having tuition of such child, contract matrimony with her by secret letters, messages, or otherwise, he shall be imprisoned for five years, or pay such fine as shall be assessed by the court, half to the king, and half to the parties aggrieved.

(z) The stat. 1 J. 1. c. 11. enacts, that if any person or persons within England, being married, do marry any person or persons, the former husband or wife being alive, every such offence shall be felony, and the person or persons so offending shall suffer death as in cases of felony. By the stat. 18 Eliz. c. 7. s. 2, 3. the offender, be-

sides being burnt in the hand, may be imprisoned for a year; by stat. 19 G. 3. c. 74. s. 3. fine and whipping may be substituted for burning, and by stat. 35 G. 3. c. 67. persons convicted under the stat. 1 J. 1. c. 11. shall be subject to the same fines, &c. with those convicted of petit larceny.

(a) The first marriage may, it seems, be alleged according to the fact, though the second took place in a different county, and the offender may be indicted in a third, where he is apprehended by the provision of the stat. 1 J. 1. c. 11. see p. 11.

(b) The county in which the indictment is laid. *Qu.* whether the concluding allegation be necessary, according to the decisions in *Berwick's case*, *Fost.* 10. *supra*, p. 11.; for the clause of the act 1 J. 1. c. 11. s. 1. has been construed to mean the county where the party is imprisoned, see p. 11. n. (d). *Hutton*, 131.; and it appears, from the record itself, that he is brought to the bar in the custody of the sheriff, see p. 28.

E. F. spinster, and to the said E. F. was then and there married the said C. D. his former wife, being (c) *then* living and in full life) against the form, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. afterwards, to wit, on (d) the first day of September, in the year last aforesaid, was apprehended and taken in the said parish of ———, in the county of ———.

73. *Indictment for having two husbands at one and same time.*

That Elizabeth, the wife of A. J. H. late of ———, on, &c. being then married, and then the wife of the said A. J. H. with force and arms, at, &c. did feloniously marry and take to husband E. P. duke of ———, (the said A. J. H. her husband, being then alive,) against the form, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said Elizabeth heretofore, to wit, on, &c. at, &c. by the name of Elizabeth C. did marry the said A. J. H. and him the said A. J. H. then and there had for her husband; and that she the said Elizabeth, being married, and the wife of the said A. J. H. afterwards, to wit, on, &c. with force and arms, at &c. feloniously did marry and take to husband the said E. P. (the said A. J. H. her husband, being then alive) against the form, &c. and against the peace, &c.

74. *An indictment for sodomy (e).*

(Commencement as in *pr.* 1.) In and upon one T. L. then and there being, feloniously did make an assault, and then and there feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair with the said T. L. and then and there carnally knew the said T. L. and then and there feloniously, wickedly, and diabolically, and against the order of nature, with the said

(c) See p. 62.

(d) See p. 11. and p. 412.  
note (b).

(e) By the stat. 25 H. 8. c.

6. 5 Eliz. 17. and 3 & 4 W.  
& M. c. 9. s. 2. this offence is  
made felony without benefit of  
clergy.



T. L. did commit and perpetrate that detestable and abominable crime of buggery (z) (not to be named among Christians,) to the great displeasure of Almighty God, to the great scandal of all human kind, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

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## OFFENCES AGAINST THE HABITATION

### 75. *Indictment for burglary (a).*

That A. B. late of ———, in the county of ———, labourer, on, &c. about the hour of one of the night (b) of

(z) This word is essential. *Fost.* 424. *Co. Ent.* 351. 3 *Ins.* 59.

(a) By the st. 18 Eliz. c. 7. and 3 W. & M. c. 9. s. 2. the offender is ousted of clergy.

Also, accessories before the fact are ousted by the latter statute.

By the st. 1 Ed. 6. c. 12. s. 10. persons attainted or convicted of breaking any house, by day or by night, any person being therein, and being thereby put in fear or dread, shall be excluded from the benefit of clergy.

By the stat. 5 Anne, c. 31. s. 5. any person who shall receive, harbour, or conceal any burglars, &c. knowing them to be such, shall be taken as accessory to the said felony, and, being convicted, shall suffer death as a felon convict.

The stat. 12 Anne, c. 7. declares and enacts, that if any person shall enter into the *mansion* or dwelling-house of another, by day or by night, without breaking the same, with an intent to commit felony, or being in such house shall commit any felony, and shall in the night time break the said house to get out of the same, such person is and shall be adjudged to be guilty of burglary, and shall be ousted of clergy, in the same manner as if such person had broke and entered the said house, in the night time, with intent to commit felony there.

(b) It is usual to allege the hour, see p. 52. and to state it to be in the night of the preceding day, though after 12 o'clock. The day itself is not material, see p. 57.

the same day, with force and arms, at the parish (c) aforesaid, in the county aforesaid, the *dwelling-house* (d) of one C. D. there situate, *feloniously* (e) and *burglariously* (e) did *break and enter* (e), with intent (f) the goods and chattels of the said C. D. in the said dwelling-house then and there being, then and there feloniously and burglariously to steal, take, and carry away, and one gold watch, of the value of thirty pounds (*describe the property and value of each article according to the fact*) of the goods and chattels of (g) the said C. D. in the said dwelling-house then and there being found, then and there feloniously and burglariously did steal, take, and carry away, against the peace, &c.

76. *Indictment for burglary, alleging a breaking in, with intent, an actual felony committed, and a breaking out, against the stat. 12 Ann. c. 7. (h).*

(Commencement as in *pr.* 75.) about the hour of twelve

(c) The parish should be correctly stated; a variance would be fatal.

(d) The house must be described as the *dwelling-house* of the real tenant, see p. 73. and the st. 12 Ann. c. 7. and this is the proper description, though part only of the house be separately occupied. The situation is material. Burglary may also be committed in a *church* or *chapel*. The personal property must be described as in larceny, where an actual stealing is averred. If a mere intent to steal be alleged, the ownership should still be correctly averred, p. 194.

(e) These words are essential, see p. 73. and so are the words, *dwelling house* and in the night. The means of breaking and entering are immaterial.

(f) The *intention* is included in the words feloniously and bur-

glariously, &c. but it must be further shewn, that the breaking and entry was done to commit a *felony*, which felony should be specified. But an averment that he did then and there commit a specific felony is a sufficient averment of the intention. A statutable felony will support the indictment. 1 Haw. c. 38. s. 38.

(g) The ownership must be correctly stated, see p. 189. 194.

(h) Upon an indictment thus framed, the defendant may be found guilty of the burglary, if either the breaking in with intent in the night time be proved, or the entry with intent, &c. and the breaking out in the night time, under the statute, or if the actual larceny, and either the breaking in or out in the night time be

in the night of the same day, with force and arms, at the parish aforesaid, in the county aforesaid, the dwelling-house of one C. D. there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said C. D. in the said dwelling, then and there being, then and there feloniously and burglariously to steal, take, and carry away; and then and there, with force and arms, one diamond necklace, of the value of forty pounds, of the goods and chattels of the said C. D. in the same dwelling-house, then and there being found, then and there feloniously and burglariously did steal, take, and carry away; and so then and there being in the said dwelling-house, and having committed the said felony as aforesaid, did then and there, against the form of the statute (i) in such case made and provided, break the said dwelling-house to get out of the same, against the peace, &c.

77. *Indictment for breaking a house in the day-time (no person being therein), and stealing goods of the value of five shillings (k).*

That A. B. late of, &c. labourer, on, &c. about the hour of eleven in the forenoon of the same day, with force and arms, at the parish aforesaid, in the county aforesaid, the dwelling-house of C. D. there situate, feloniously did break and enter, (no person in the same dwelling-house then and there being,) and two pewter dishes, of the value of seven shillings (*here mention all the goods stolen,*) of the goods and chattels of the said C. D. in the same dwelling-house then and there being found, then and there feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

proved. So though the evidence does not warrant a conviction of the burglary, he may be convicted of stealing in the dwelling-house to the amount of 40 shillings, or of the simple larciny. see p. 37. plea of *autrefois acquit* and *verdict*, and Leach, 102.

(i) Since the stat. is declaratory, the averment does not seem to be necessary, but it is not improper, see p. 210, n.(2).

(k) See 39 Eliz. c. 15. 1 Hale, 525.

78. Indictment for arson (l).

(Commencement as in *pr.* 1.) a certain house (m), of one

(l) Arson was felony at common law, 3 Ins. 66.; the wilful burning of dwelling-houses, or barns containing corn or grain, was ousted of clergy by stat. 23 H. 8. c. 1. and 25 H. 8.; but these stat. were repealed by the stat. 1 Ed. 6. c. 12. s. 10.

The stat. 4 and 5 Ph. & M. c. 4. excludes from clergy those who shall maliciously command, hire, or counsel any person or persons, wilfully to burn any dwelling-house, or any part thereof, or any barn then having corn or grain in the same. And this stat. has been holden, by necessary implication, to take away clergy from the principal offender. *Poulter's case*, 11 Rep. 35. *Fost.* 330. 2 *Hale*, 347. 1 *Hale*, 572.

The stat. 9 G. 1. c. 22. made perpetual by stat. 31 G. 2. c. 42. excludes from clergy any person who shall be lawfully convicted of setting fire to any house, barn, or outhouse, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood.

By the stat. 9 G. 3. c. 29. s. 2. if any person shall wilfully or maliciously burn, or set fire to, any wind saw-mill, or other wind-mill, or any water-mill, or other mill, such person being lawfully convicted thereof, shall be adjudged guilty of felony, without benefit of clergy. The above form will suffice for an indictment

under this act, if the word *windmill* be substituted for *house*.

The prosecution must be commenced within 18 months after the commission of the offence, sec. 4.

By the stat. 43 G. 3. c. 58. s. 1. if any person shall wilfully, maliciously, and unlawfully, set fire to any house, barn, granary, hop, oast, malt-house, stable, coach-house, out-house, mill, warehouse, or shop, which shall then be in possession of the person or persons so setting fire to the same, or of any body corporate, with intent thereby to injure or defraud his majesty, or any of his majesty's subjects, or any body corporate, then, and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of, and being privy to such offence, shall be felons, and shall suffer death without benefit of clergy.

(m) Arson, at common law, is an offence against the *habitation*, but it might be committed, not only by burning the dwelling-house, but also the out-houses, which were parcel of the dwelling-house. 1 *Hale*, 570. 3 Ins. 67. 69. 1 *Haw.* c. 39. s. 1, 2. and it is not necessary to allege the burning of the *dwelling-house*, but only of the house simply. 1 *Hale*, 567. 570. 3 Ins. 67. 1 *Haw.* c. 39. s. 1. In *Glandfield's*

C. D. (n) there situate, feloniously (o), *wilfully*, and *maliciously*, did set fire to, and the same house then and there, by such firing as aforesaid, feloniously, wilfully, and ma-

case, East. P. C. 1034. it was holden, that *outhouses* generally was a sufficient description under 9 G. 1. c. 22. without shewing of what kind.

(n) The allegation of ownership is material, for it must appear, that the offence was committed against the property of another, and this allegation must be distinctly proved. Pedley's case, Leach, 277. Breeme's case, Leach, 261. Spalding's case, Leach, 258. Holmes's case, Cro. Car. 376. 3 Ins. 66. In the case of the Rickmans, East. P. C. 1034. the defendants were charged with the arson of *a certain house situate in the parish of Ellingham, &c.* and, after conviction, all the judges held that the conviction was wrong, because the indictment did not state the ownership. It appeared in that case, that the house belonged to the parish, and that they suffered one Thomas Early to live in it, but in whom the legal estate was vested was unknown; and the judges held, that it might have been laid to be the property of the overseers, or of persons unknown.

Where there is a doubt in which of several persons the property vests, it should be differently described in different counts, in order to obviate any objection on the score of variance.

If the occupation be merely

permissive, as by a pauper of a house belonging to the parish, the property cannot be laid in him, vide *supra*, Rickman's case; and if such pauper, or a mere servant, burn the house which he inhabits, even exclusively, he is guilty of arson. Gowen's case, East. P. C. 1027.

Otherwise, if the defendant has possession under a lease for years, Holmes's case, Cro. Car. 376. 3 Ins. 66. 1 Hale, 568, Breeme's case, Leach, 261. Pedley's case, Leach, 277. or as mortgagor, Spalding's case, Leach, 258. But it seems, that if the mere reversion be in the defendant, who has not possession, he may be guilty of the offence by burning the house. Harris's case, Fost. 113. East. P. C. 1023. In Spalding's, Breeme's, and Pedley's cases, it was holden, that, in respect of the property against which the offence was committed, the stat. 9 G. 1. c. 22. did not alter the common law. The offence is against the possession, and the house, &c. should be described as belonging to the person who has possession coupled with an interest; for if the occupation be *merely permissive*, the house ought not to be described as the occupier's. See Rickman's and Gowen's case, *supra*. In Glandfield's case, East P. C. 1034. it appeared, that the outhouses burnt, including the

liciously did burn and (p) consume, against the form of the statute, &c. and against the peace, &c.

brewhouse, were the property of Blanche Silk, widow, as also was the dwelling-house in which she lived with her son J. S.; that the son alone occupied the outhouses, with the exception of the brewhouse, on his own account, but without any particular agreement with his mother; that she repaired the dwelling-house and outhouses, and that they jointly contributed to the ingredients for the beer, which was brewed in the brewhouse, and which was used in the family. Mr. J. Heath held, that the brewhouse ought to be laid as in their joint occupation, but the other outhouses as in the occupation of the son; and upon the indictment so drawn, the prisoner was convicted and executed.

If a man, by setting fire to his own house, endanger others which are contiguous, he may be indicted for the misdemeanor, and it is unnecessary in such case to aver an intention to burn the contiguous houses. 1 Hale, 568. Cro. Car. 377. Schofield's case, Cald. 397. But if the defendant set fire to his own house with intent to defraud the insurers, and the house of his neighbour be burnt in consequence, the offence will amount to arson. Per Grose, J. in giving judgment in Probert's case, East. P. C. 1030.

And in Isaac's case, East.

P. C. 1031. where the offence committed under such circumstances, was laid as a misdemeanor, Buller, J. directed an acquittal on the ground, that the misdemeanor merged in the felony. And if the defendant set fire to his own house, with intent to burn his neighbour's house, and the latter be burnt in consequence, the offence is as much arson, as if the defendant had immediately set fire to his neighbour's house; therefore if A. intending to burn B.'s house, set fire to his own, and B.'s is burnt in consequence, the indictment may charge A. directly with the wilful and malicious burning of B.'s house. 1 Hale, 569. East. P. C. 1034.

(o) The words *maliciously* and *wilfully*, are descriptive of the offence as ousted of clergy by the stat. 4 and 5 Ph. & M. c. 4. but they are no part of the description under the stat. 9 G. 1. c. 22. though under the latter statute, to oust the offender of clergy, it must appear that the act was *wilful* and *malicious*, and it seems to be safer so to aver it. See 1 Hale, 567. 569. 3 Ins. 67. East. P. C. 1033.

(p) This averment, under the stat. 9 G. 1. is usual, but does not seem to be essential, since the offence is complete by *setting the house on fire*.

79. *For burning a cotton mill (q).*

*County palatine of Lancaster*, to wit, &c. that James Smith, &c. together with divers other ill-disposed persons, whose names are to the said jurors at present unknown, heretofore, to wit, on the 24th day of April, in the 52d, &c. Geo. 3. &c. with force and arms, at Westhoughton, in the county palatine of Lancaster, did feloniously, wilfully, maliciously, and unlawfully, set fire to and burn a *certain cotton mill, warehouse, and shop*, situate at Westhoughton aforesaid, in the county palatine aforesaid, and then being in the possession of one Thomas Wroe, and one James Duncuft, with intent thereby to injure the said Thomas Wroe and James Duncuft; (they the said Thomas Wroe and James Duncuft, at the time of committing the felony aforesaid, being liege subjects of our said lord the king,) against the form of the statute, &c. and against the peace, &c. (2d count.) And the jurors, &c. that the said James Smith, &c. and the other ill-disposed persons, whose names are to the said jurors unknown, afterwards, to wit, on the same day and year aforesaid, with force and arms, at Westhoughton aforesaid, in the county aforesaid, did feloniously, wilfully, maliciously, and unlawfully, set fire to and burn a *certain mill, to wit, a cotton mill*, situate at Westhoughton aforesaid, in the county aforesaid, and then being in the possession of the said Thomas Wroe, &c. (as in the first count.) 3d count, charges the prisoner with setting fire to a certain *warehouse*, &c.; 4th count with setting fire to a certain *shop*, &c.

80. *For burning his own house, with intent to defraud the insurers (r).*

On, &c. with force and arms, at, &c. feloniously, wilfully, maliciously, and unlawfully, did set fire to a cer-

(q) This form of indictment was used against several prisoners, who were tried at a special session at Lancaster, May, 1812; it was objected, that a cotton mill was not within the

meaning of the statute, but the objection was overruled.

(r) Under the stat. 43 G. 3. c. 58. s. 1. supra, 417. n. (l). see Gillson's case, 1 Taunt. 95.

tain house, being in the possession of him the said A. B. with intent thereby to injure and defraud the *London Assurance of houses (s) or goods from fire*, (then and there being a body corporate) against the form of the statute, &c. and against the peace, &c.

*81. Indictment for setting fire to Portsmouth dock-yard, and destroying naval stores.*

(*Commencement as in pr. 1.*) twenty tons weight of hemp, of the value of one hundred pounds, ten cable ropes, each thereof being in length one hundred fathoms, and in circumference three inches, and of the value of eighty pounds, and six tons weight of cordage, of the value of two hundred pounds, the said hemp, cable ropes, and cordage, then and there being naval stores of our said lord the king, and then placed and deposited in a certain building in the dock-yard of our said lord the king, there situate, called the rope-house, feloniously, wilfully, and maliciously, did set on fire and burn, and cause and procure to be set on fire and burnt, against the form of the statute, &c. and against the peace, &c. (*2d count, commencement, as in pr. 5.*) a certain building erected in the dock-yard of our said lord the king there situate, called the rope-house, feloniously, wilfully, and maliciously did set on fire, and cause and procure to be set on fire, against the form of the statute, &c. and against the peace, &c. (*3d count,*) a certain building of our said lord the king there situate, in which great quantities of naval stores, that is to say, twenty tons weight of hemp, ten cable ropes, and six tons weight of cordage, of our said lord the king, were then placed and deposited, feloniously, wilfully, and maliciously did set on fire, and cause and procure to be set on fire, against the form of the statute, &c. (t) and against the peace, &c.

*82. Indictment for setting fire to a stack of hay.*

A certain stack of hay, of and belonging to one to T. P. feloniously, unlawfully, wilfully, and maliciously, did set fire to, against the form of the statute (u), &c. and against the peace, &c.

(s) According to the fact.

(t) 12 G. 3. c. 24.

(u) 9 G. 1. c. 22. see p.

417. n. (l).



83. *Indictment, at common law, for setting fire to a place of confinement in a borough.*

(Commencement as in *pr. 1.*) a certain building there situate and being, called ———, (the same then and there being the prison of the borough of M. in the county aforesaid), then and there wickedly, wilfully, maliciously, and injuriously, did set fire to, and the same building, called ———, then and there unlawfully, wickedly, and injuriously, did, by such firing, burn, consume, and destroy, against the peace, &c. (*2d count, commencement as in pr. 5.*) a certain building there situate and being, called ———, then and there wickedly, wilfully, maliciously, and injuriously did set fire to, and the same building, called ———, then and there wickedly and injuriously did, by such firing, burn, consume, and destroy, &c.

84. *Indictment for a forcible entry and detainer at common law.*

That A. B. late of, &c. yeoman, and C. D. late of the same, labourer, together with divers other evil-disposed persons and disturbers of the peace of our said lord the king, to the number of six and more, (whose names to the jurors aforesaid are as yet unknown,) on, &c. with force and arms, *and with a strong hand (t)*, unlawfully, violently, forcibly, and injuriously, did enter (*u*) into (*state the premises according to the (x) fact,*) \*then and there being in the peaceable possession of one E. F. and

(*t*) See 8 T. R. 357. R. v. Wilson et al. 6 Mod. 96. R. v. Dyer.

(*u*) An indictment under the statutes for a detainer must shew an *entry*. 1 Haw. c. 64. s. 40. Roll. Ab. 89. But under the stat. 8 H. 6. it need not be alleged, that the entry was *forcible*, when a forcible detainer alone is complained of.

(*x*) The description of the situation is essential, and a va-

riance would be fatal, see p. 176. and appendix, notes, 176. If the indictment be framed upon one of the stat. for the purpose of obtaining restitution, the premises must be described with certainty, in order to enable the justices and sheriff to restore the possession; and, therefore, the same degree of certainty is requisite as in a declaration in ejectment. See 1 Haw. c. 64. s. 37.

situate and being in the parish aforesaid, in the county aforesaid; and that the said A. B. and C. D. together with the said other evil-disposed persons, then and there, with force and arms, *and with a strong hand (y)*, unlawfully, violently, forcibly, and injuriously, did expel, amove, and put out the said E. F. from the possession of the said premises, with the appurtenances, and the said E. F. so as aforesaid expelled, amoved, and put out from the possession of the same, with force and arms, *and with a strong hand*, unlawfully, violently, forcibly, and injuriously, have kept out, from the day and year aforesaid, until the taking of this inquisition, and still do keep out, and other wrongs to the said E. F. then and there did, to the great damage of the said E. F. and against the peace, &c.

85. *For a forcible entry into a freehold (z).*

(*As in pr. 84. to the \**) then (a) and there being, the freehold of E. F. and then being in the tenure and occupation of one (b) G. H. and did then and there, with force

(y) The words with force and arms are implied in the words *with a strong hand*. 1 Haw. c. 64. s. 44.

(z) R. v. Edwards et ux. Trem. P. C. 192. see the stat. p. 425.

(a) An indictment under the stat. 8 H. 6. c. 9. should shew, that the place was the *freehold* of the party grieved, at the time of the force, and, therefore, it is not sufficient to say, "being the freehold of E. F." without the word *then*, which shews it to have been his freehold at the time of the force, see p. 54. Baude's case, Cro. J. 41. 214. Dy. 69. 1 Haw. c. 64. s. 38. It seems to be unnecessary to aver expressly, that the party grieved was seised of the freehold, 1 Haw. c. 64. s. 38.

Trem. P. C. 192. And it is unnecessary to shew what particular estate the party had, or by what title he held it, for the injury is to the possession. Ib.

It would be repugnant to allege *then and yet* being the freehold, since it would imply, that the party was in possession at the time of finding the indictment, and therefore would be inconsistent with the allegation, that the wrong-doer still keeps the party out, 1 Haw. c. 64. s. 39.; and, at all events, no restitution could be awarded, since it would appear that the party complaining had the freehold at the time of the inquisition. Ib.

(b) It has been holden, that an indictment on the stat. 5 and 15 R. 2. need not shew

and arms, *unlawfully*, with a strong hand, and *without judgment recovered* (b), *disseise* (c) the said E. F. and *expel* and eject the said G. H. from his possession of the same, and with force and arms unlawfully, and *with a strong hand*, from the day and year aforesaid, until the taking of the inquisition, have kept out, and still (d) do keep out the said F. F. so disseised as aforesaid, and the said G. H. so ejected and expelled as aforesaid from the said premises, with the appurtenances, against the the form of the *statute* (e), &c. and against the peace, &c.

whose the freehold was at the time of the force, but that it should shew that the entry was made on the possession of some person who had some estate in the premises, either as a freeholder or lessee. 1 Haw. c. 64. s. 38. Yel. 165.

(b) In the original it is *sine judicio*.

(c) The word *disseise* is sufficient without either of the words *unlawfully* or *expel*, for the word implies an unlawful expulsion. Noy. 125. Cro. J. 32. Cro. Eliz. 86.

(d) To entitle the party grieved to restitution, it must be shewn that the wrong-doer ousted the party grieved, and that the possession of the wrong-doer *continued* at the time of finding the indictment; for it would be absurd to award restitution to one who had no possession, and in vain to award it to one who does not appear to have lost it. Salk. 260. Str. 474. 1 Haw. c. 64. s. 41.

(e) See the Prec. Trem. 192. and *supra*, p. 217.

By stat. 5 Rich. 2. ch. 8.

the king defendeth, that none, from henceforth, make "any entry into any lands and tenements, but in case where entry is given by the law; and in such case, not with strong hand, nor with multitude of people, but only in peaceable and easy manner. And if any man, from henceforth, do to the contrary, and thereof be duly convict, he shall be punished by imprisonment of his body, and thereof ransomed at the king's will."

By stat. 15 Rich. 2. c. 2. it is enacted, that the said statute, and all others made against forcible entries, &c. shall be fully executed; and further, that at all times when such forcible entries shall be made, and complaint thereof cometh to the justices of the peace\*, or to any of them, the same justices or justice take sufficient power of the county, and go to the place where the force is made; and if they find any that hold such place forcibly, after such entry made, they shall be taken and put

\* For the proceedings upon application to one or more justices, see Burn's Jus. 383. edit. 21.

86. *For a forcible entry on tenant for years, under the stat. 21 J. 1. c. 15 (f).*

*The form is the same as in pr. 84. introducing after the words in the peaceable possession of one E. F. the words*

into the next gaol, there to abide, convict, by the record of the same justices or justice, until they have made fine and ransom to the king. And that all the people of the county, as well the sheriffs as others, shall be attendant upon the same justices, to go and assist the same justices to arrest such offenders, upon pain of imprisonment, and to make fine to the king. And in the same manner it shall be done of them that make such forcible entries into benefices, or offices of holy church.

By stat. 8 Hen. 6. c. 9. when forcible entry is made into premises, which are afterwards *held forcibly*, justices of the peace are to inquire of the force, by a jury summoned by the sheriff; and cause the tenements to be seized and restored, &c.

By sec. 2. all former statutes concerning forcible entry are confirmed.

By sec. 6. of the same stat. the party grieved shall have an action of trespass against the offender for *treble* damages, and the defendant shall moreover make fine and ransom to the king.

(f) In order, however, that parties grieved, having a less estate than that of freehold, should be relieved by restitution,

It is by stat. 21 Jac. 1. c. 15, enacted, "that such judges, justices, or justice of the peace, as by reason of any act or acts of parliament now in force, are authorised and enabled upon inquiry, to give restitution of possession unto tenants, of any estate of freehold, of their lands or tenements, which shall be entered upon with force, or from them with-holden by force, shall, by reason of this present act, have the like and the same authority and ability, from henceforth, (upon indictment of such forcible entries, or forcible with-holdings before them duly found) to give like restitution of possession unto tenants for term of years, tenants by copy of court-roll, guardians by knight-service, tenants by *elegit*, statute merchant and staple, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force."

By stat. 31 Eliz. c. 11. no restitution upon any indictment of forcible entry, or holding with force, shall be made to any person, if the person so indicted hath had the occupation, or been in quiet possession, for the space of three whole years together, next before the day of such indictment so found, and his estate therein not ended; which the

for a certain term (z) of years then to come, and then and yet unexpired; *then proceed as in pr. 84. concluding as in pr. 85, against the form of the statute, &c.*

## LARCINY AND ROBBERY.

### 87. *Indictment for grand larciny, in stealing the property of different persons.*

(Commencement as in pr. 1 (a).) one (b) silver watch, of the value (b) of forty shillings, of the goods and chattels of (b) E. F. two hats, of the value of twenty shillings, and two (c) waistcoats, of the value of six shillings\*, of the

party indicted may allege for stay of restitution, and restitution to stay till that be tried, if the other will deny or traverse the same: and if the same allegation be tried against the same person so indicted, he is to pay such costs and damages to the other party as shall be assessed by the judges or justices before whom the same shall be tried; the same costs and damages to be recovered and levied as is usual for costs and damages contained in judgments upon other actions.

(z) In order to bring the case within the stat. it must be alleged, that the party was possessed of a term *for years*, that he was *possessed* is not of itself sufficient. 1 Haw. c. 64. s. 38. 1 Vent. 306. 1 Sid. 102. 1 Mod. 73.

(a) As to the venue, when goods stolen elsewhere are brought into the body of a county, see p. 10. 13 G. 3. c. 31. s. 4. and 44 G. 3. c. 92.

(b) As to the description of the property stolen, its value, and ownership, see chap. X. p. 180.

(c) Although, in general, the value of each different individual article stolen should be specified, p. 187. 2 Hale, 183. yet where several articles of property of the same nature and kind, are stolen at the same time, as several sheep or handkerchiefs, it is the common practice to allege their value cumulatively, as ten handkerchiefs, of the value of 20 shillings. And unless the defendant be convicted of stealing part only, no uncertainty can arise; but if the jury find that he stole one only, then it may be doubtful, whether the offence be grand or petit larciny, since they were not alleged to be of the value of two shillings each, but in such case the difficulty might be obviated by finding the value specially.

goods and chattels of (e) one G. H. then and there being found, *feloniously* did *steal*, *take*, and *carry away* (f), against the peace, &c.

88. *Indictment under the stat. 21 H. 8. c. 2. (g) against a servant for feloniously embezzling his master's goods, delivered to him to keep for the master's use.*

That A. B. late of, &c. labourer, on, &c. then being a servant of and to one C. D. and not an apprentice (h), or a person within the age of eighteen years (h), he the said C. did then and there, upon confidence and trust, deliver unto the said A. B. his said servant, one silver watch, of the value of five pounds, of the goods and chattels of him the said C. D. safely to keep the same to the use of him

(e) Where the felonies are completely distinct, they ought not to be joined in the same indictment, see p. 37.; but where the transaction is the same, as where the property of different persons is taken at the same time, there seems to be no objection to the joinder, &c.

(f) These words are essential, see p. 73. and, in an indictment of this nature, it is unnecessary further to specify the means of gaining possession of the property. See p. 87. Leach, 273. 305. 730.

An indictment for petit larciny differs from one for grand larciny in no other respect than in laying the value at one shilling or under.

(g) By this stat. servants having caskets, jewels, money, goods, or chattels, delivered to them by their masters or mistresses, safely to be kept for the use of their said masters or mistresses, and after such de-

livery withdrawing themselves from their masters or mistresses, and going away with the said caskets, &c. or any part thereof, to the intent to steal the same and defraud his or their said masters or mistresses thereof, contrary to the trust and confidence to him or them put by his or their said masters or mistresses; or else being in the service of his said master or mistress, without assent or commandment of his master or mistress, if he embezzle the said caskets, &c. or any part thereof, or otherwise convert the same to his own use, with like purpose to steal it, (if the said caskets, &c. be of the value of forty shillings, or above,) then the same false, fraudulent, and untrue act or misdemeanor shall be adjudged felony; and he or they so offending shall be punished as other felons are punished.

(h) Unnecessary, the exceptions are not in the *purview*, 162.

the said C. D. and that he the said A. B. after the said delivery and whilst he was such servant (i) as aforesaid, to wit, on the — day of —, with force and arms, at the parish aforesaid, in the county aforesaid, did feloniously withdraw himself from the said C. D. his said master, and feloniously did go away with the same silver watch above mentioned, to the intent to steal the same, and defraud the said C. D. his said master, thereof, contrary to the trust and confidence in him the said A. B. put by the said C. D. his said master, against the form of the statute, &c. and against the peace, &c. (*Add a count for a common larciny, as in pr. 87.*)

89. *Indictment against a clerk for embezzlement, under the stat. 39 G. 3. c. 85 (k).*

*Lancashire, &c. that J. J. late of Liverpool, in the*

(i) He must be servant, both at the time of the delivery and running away. Dalt. c. 58. Dyer 5. 1 Haw. c. 33. s. 12. East. P. C. 562.

(k) By 39 Geo. 3. c. 85. it is enacted and declared, that if any servant or clerk, or any person employed for the purpose, in the capacity of a servant or clerk, to any person or persons whomsoever, or to any body corporate or politic, shall by virtue of such employment receive or take into his possession any money, goods, bond, bill, note, bankers draft, or other valuable security or effects, for or in the name, or on the account of his master or masters, or employer or employers, and shall fraudulently embezzle, secrete, or make away with the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same from

his master or masters, employer or employers, for whose use, or in whose name or names, or on whose account, the same was or were delivered to, or taken into the possession of such servant, clerk, or other person so employed, although such money, goods, bond, bill, note, banker's draft, or other valuable security, was or were no otherwise received into the possession of his or their servant, clerk, or other person so employed; and every such offender, his adviser, procuror, aider, or abettor, being thereof lawfully convicted or attainted, shall be liable to be transported to such parts beyond the seas, as his majesty, by and with the advice of his privy council, shall appoint, for any term not exceeding fourteen years, in the discretion of the court before whom such offender shall be convicted or adjudged,

county of Lancaster, labourer, on, &c. at, &c. was clerk to the trustees of the Liverpool docks, and the said J. J. being such clerk as aforesaid, did then and there, by virtue of his said employment as such clerk as aforesaid, receive and take into his possession, for and on account of the said trustees of the Liverpool docks, divers, to wit, nine bank notes (*l*), for the payment of divers sums of money, amounting in the whole to a certain sum of money, to wit, the sum of 9*l*. of lawful money of Great Britain, and of the value of 9*l*. of like lawful money; and the said J. J. having so received and taken into his possession the said bank notes for and on account of his said employers, the said trustees of the Liverpool docks, he the said J. J. afterwards, to wit, on the same day and year aforesaid, with force and arms, at, &c. fraudulently and feloniously did embezzle(*m*) and secrete the same (*n*):

(*l*) In *Milnes's case*, East. P. C. 602. the prisoner was charged with stealing one promissory note for the payment of one guinea, and also one other promissory note for the payment of five guineas, which said notes were the property of J. M. and were due and unsatisfied; and this was holden to be a sufficient description under the stat. 2 G. 2. and in the case of the *King v. Johnson*, where the above indictment was used; the case of the *King v. Simpkin* was cited, which had been tried before Mr. J. Chambre, who held that a general description was sufficient. See *R. v. Campbell*, Leach, 642. where the property was described as one promissory note called a bank note, of the value of 25 pounds, the said note, at the time of committing the felony aforesaid, being the property of the said C. M. A. and the said sum of 25 pounds payable and

secured by the said note, being then due and unsatisfied to the said C. M. A.; a similar description was used in *Nicholson's case*, Leach, 678.

(*m*) The act is declaratory of the common law, consequently, an indictment framed upon it must contain all that is essential to an indictment for larciny at common law. *R. v. M'Gregor*, 3 Bos. & Pull. 106. and, therefore, it appears to be necessary to superadd to the description of a larciny at common law, the descriptive words of the statute.

(*n*) This is the form in which indictments under this statute are usually drawn, and it is remarkable that the words descriptive of the larciny at common law, which are essential, (since the act is merely *declaratory* of the common law,) should be alleged after the words *and so the jurors aforesaid*, &c. as if the larciny were nothing more than a mere con-



and so the jurors aforesaid, upon their oath aforesaid, do say, that he the said J. J. on the said — day of —, in the year aforesaid, with force and arms, at, &c. *in manner and form aforesaid*, feloniously did steal, take, and carry away the said bank notes from his said employers the said trustees of the Liverpool docks, the said bank notes being then and there the property of the said trustees of the Liverpool docks, on whose account the same were received by and taken into the possession of him the said J. J. being such clerk as aforesaid, and the several sums of money payable and secured thereby being then, to wit, at the time of committing the felony aforesaid, to wit, at, &c. due and unsatisfied to the said trustees of the Liverpool docks, the proprietors thereof, against the form of the statute, &c. and against the peace, &c.

2nd count charges the like felony by the said J. J. *being employed in the capacity of clerk* to the said trustees of the Liverpool docks.

3rd count charges the like felony by the said J. J. *being a servant* to the said trustees of the Liverpool docks.

4th count charges the embezzling of the property of H. C. to whom the said J. J. was clerk.

5th count charges the embezzling of the property of H. C. he the said J. J. being employed in the capacity of a clerk to the said H. C.

6th count states the embezzlement of the property of H. C. he the said J. J. *being a servant* to the said H. C.

7th count. And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said J. J. afterwards, to wit, on the same day and year aforesaid, with force and arms, at Liverpool aforesaid, in the county aforesaid, feloniously did steal, take, and carry away divers, to wit, nine other bank notes for the payment of money, that is to say, for the payment of nine pounds

elusion from the premises, and not a substantive allegation, and this seems to be objectionable since no larciny is directly averred. The objection would be obviated by averring, that the defendant, "on, &c. with force and arms,

at, &c. fraudulently and feloniously did steal, take, carry away, embezzle, and secrete the same," i. e. by engrafting the words of the stat. upon the common law description of larciny.

and of the value of nine pounds, the said last-mentioned bank notes, at the time of committing the felony last aforesaid, being the property of the said H. C. and the several sums of money payable and secured thereby, being then due and unsatisfied to the said H. C. the proprietor thereof, against the form of the statute, &c. and against the peace (n), &c.

90. *Indictment for stealing goods let by contract to be used with a lodging (o).*

(*As in pr. 87. to the \*.*) Of the goods and chattels of

(n) The prisoner was convicted upon this indictment, coram Le Blanc, J. at the spring assizes for Lancashire, 1814. Two objections were made in arrest of judgment: 1st. That the prisoner was not charged with having embezzled any one bank-note of a specified amount and value. 2dly. That the joinder of a felony at common law with a felony under the statute was improper. The court was of opinion, upon the first point, that as the stat. particularly mentioned bills and notes, it was sufficient to state them as bank-notes for the payment of money, without averring the amount and the denomination of each; that, as to the alleged misjoinder, the answer was, that both the offences were felonies, and both of them larcinies; and that, though it might have been more consistent, if the embezzling act had enacted, that the offence should be considered grand larciny, and had authorized the court to direct the offender to be transported, yet that the proper judgment might be given,

if the offender should be convicted on any one count; that where the offences are of the same nature, their joinder cannot be taken advantage of in arrest of judgment, and that in the principal case the offences were of the same nature, and the prisoner equally entitled to his challenges; and that upon a case which was tried at the Old Bailey, where the prisoner was indicted for uttering a number of forged receipts, the judges held that it was always a matter of discretion in the court, where different offences of the same nature were charged in the same indictment, to put the prosecutor to his election, but not a ground for arresting the judgment, see p. 36.

(o) By stat. 3 & 4 W. & M. c. 9. s. 5. if any person or persons shall take away, with intent to steal, &c. any chattel, bedding, or furniture, which by contract or agreement they are to use, or shall be let to them in lodgings, such taking, &c. shall be adjudged larciny and felony.

one (*p*) E. F. (the (*q*) same goods and chattels being in a certain lodging-room in the dwelling-house of the said E. F. there situate, let by contract by the said E. F. to the said A. B. and to be used by the said A. B. with the lodging aforesaid,) then and there being found, feloniously did steal, take, and carry away, against the form of the statute, &c. and against the peace, &c.

91. *Indictment for stealing a letter, containing bills of exchange, out of a bag sent by the post (r).*

(Commencement as in *pr.* 1.) Feloniously (*s*) did steal,

(*p*) The name of the owner must be correctly stated, *p.* 177. *R. v. Pope*, Leach, 617.

In *Palmer's case*, 2 Leach, 782. *East. P. C.* 586. it was holden that the statute did not apply to the case of a defendant who hired a *whole house* ready furnished; and some of the judges were of opinion that the statute did not apply to a case where the defendant contracted to make good what should be missing or injured.

(*q*) In *Burnell's case*, Leach, 668. *East. P. C.* 587. it was objected to an indictment drawn in this form, that it did not state that the goods were let *at the time* they were stolen, but all the judges held that the indictment was sufficient. See Leach, 377. 668. 782.

(*r*) By 7 Geo. 3. c. 50. s. 2.

it is enacted, that if any person or persons whatsoever shall rob any mail or mails, in which letters are sent or conveyed by the post, of any *letter* or letters, *packet* or packets, *bag* or mail of letters; or shall steal or take from or out of any such mail or mails, or from or out of any bag or bags of letters, sent or conveyed by the post, or from or out of any post office,\* or house or place for the receipt or delivery of letters or packets sent or to be sent by the post, any letter or letters, packet or packets; although such robbery, stealing, or taking, shall not appear, or be proved, to be a taking from the person, or upon the king's highway, or to be a robbery committed in any dwelling-house, or any coach-house, stable, barn, or any out-

\* It was holden in *Pearce's case*, *East. P. C.* 603. that the defendant who procured the bags of letters from the post-office to be let down to him by a string, pretending that he was the mail guard, was within this statute.

In *Howatt's case*, *East. P. C.* 604. it was holden that a letter carrier who fraudulently obtained possession of letters at the office, intending to deliver them to the owners, but to embezzle the postage, was not within the act.

take, and carry away (t) one letter (u) from and out of a certain bag of letters, then and there sent by the post,

house belonging to any dwelling-house; and although it should not appear that any person or persons were put in fear by such robbery, stealing, or taking, yet such offender or offenders, being thereof convicted as aforesaid, shall nevertheless respectively be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy.

By the stat. 52 G. 3. c. 143. s. 3. if any person shall steal and take from any carriage, or from the possession of any person employed to convey letters sent by the post of Great Britain, or from or out of any post-office, or house, or place, for the receipt or delivery of letters, or packets, or bags, or mails of letters, sent or to be sent by such post, any letter, or packet, or bag, or mail of letters, sent or to be sent by such post, or shall steal and take any letter or packet out of any such bag or mail, every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy; and such offence shall and may be inquired of, tried, and determined, either in the county where the offence shall be committed, or where the party shall be apprehended.

By sec. 2. If any person employed by the post office, shall steal from any letter, &c. which shall have come into his

hands, any note, &c. he shall suffer death, without benefit, &c. By sec. 4. the like penalty is to be inflicted upon any person who shall counsel any person employed by the post-office, to commit such offence, or who shall receive such property, knowing the same to have been stolen out of such letter, &c. and such persons may be tried and attainted, as well before as after the trial of the principal felon, and whether he be amenable to justice or not.

(s) The indictment must be laid in the county where the mail was actually taken, and therefore, where upon the evidence it appeared that the taking of the letters from the mail was committed in one of the counties A. and B. through which the mail passed, and that he had them in possession in the county C. where he left the mail-coach; it was holden that the evidence did not support an indictment for the offence in the county C. Thomas's case, East. P. C. 607.

(t) These words, which are added as descriptive of a larciny at common law, are not always inserted in indictments under this act, and are not used in the statute. See C. C. A. 286. East, P. C. 576.

(u) It seems to be sufficient to describe it generally as a letter, but if the direction of the letter be known, it would be proper, in one count, to

to wit, by the post from C. in the county of D. to E. against the form of the statute, &c. and against the peace, &c. (*In a second count describe the property as*) one packet (the said packet being then and there a letter, containing sundry bills of exchange) from and out of a certain other bag of letters, then and there sent by the post, to wit, by the post from C. aforesaid, in the said county of D. to E. aforesaid.) (*In a third count describe the property as*) one packet from and out of a certain other bag of letters, then and there sent by the post, that is to say, by the post from C. aforesaid, in the said county of D. to E. aforesaid, *and conclude as before.*

92. *For a mail robbery (m).*

The jurors, &c. that G. M. late of M. in the county palatine of Lancaster, labourer, otherwise called George Moors, late of the same place, labourer, heretofore, to wit, on, &c. with force and arms, at, &c. feloniously did rob (*n*) a certain mail in which letters were then and there sent and conveyed by the post, to wit, by the post from Altrincham, in the county palatine of Chester, for and towards Manchester, in the county palatine of Lancaster, of one bag of letters, against the form of the statute, &c. and against the peace, &c.

(*2nd Count.*) And the jurors, &c. that the said G. M. &c. afterwards, to wit, on the 21st day of January, in the 51st year of the reign aforesaid, with force and arms, at M. in the county palatine of Lancaster, feloniously did steal and take from and out of a certain other mail in

describe the letter as directed, to, &c. In Dawson's case, the letter was described as "to be delivered to persons using in trade the name and firm of Messrs. B. Nott," and though they generally subscribed themselves as B. Nott, without *Messrs.* yet, as this word was frequently added to their address, in the direction of letters and other papers received on business, it was holden that

there was no variance. East, P. C. 605.

(*m*) The defendant was convicted and received sentence of death, but was reprieved on condition of transportation for life.

(*n*) See last pr. note (*m*), and qu. whether it would not be proper to add words as descriptive of a robbery or larceny at common law.

which letters were then and there sent and conveyed by the post, to wit, by the post from Altringham, in the county palatine of Chester, for and towards Manchester, in the county palatine of Lancaster, divers, to wit, two letters sent by the post, to wit, by the post from Altringham, in the county of Chester, that is to say, one letter for and to be delivered to certain persons at Newark, in Nottingham, that is to say, one William Caparn and one Walter Hare, and one other letter, against the form of the statute, &c. and against the peace, &c.

(*3rd Count.*) And the jurors, &c. that the said G. M. &c. afterwards, to wit, on the 21st day of January, in the 51st, &c. with force and arms, at Manchester, in the county palatine of Lancaster, feloniously did steal and take, from and out of a certain other mail in which letters and packets were then and there sent and conveyed by the post, to wit, by the post from Altringham, in the county palatine of Chester, for and towards Manchester, in the county palatine of Lancaster, divers, to wit, two packets sent by the post, to wit, by the post from Altringham, in the county palatine of Chester, that is to say, one packet for and to be delivered to certain persons at Newark, in Nottinghamshire, to wit, the said William Caparn and Walter Hare, and one other packet, against the form of the statute, &c. (*4th Count.*) And the jurors, &c. that the said G. M. &c. afterwards, to wit, on, &c. with force and arms, at M. in the county palatine of Lancaster, feloniously did steal and take from and out of a certain bag of letters, then and there sent and conveyed by the post, to wit, by the post from Altringham, in the county palatine of Chester, for and towards M. in the county palatine of Lancaster, divers, to wit, two other letters sent by the post, to wit, by the post from Altringham, in the county palatine of Chester, that is to say, one letter for and to be delivered to certain persons at Newark, in Nottinghamshire, that is to say, the said William Caparn and Walter Hare, and one other letter, against the form of the statute, &c.

(*5th Count.*) And the jurors, &c. that the said G. M. &c. on, &c. with force and arms at M. in the county palatine of Lancaster, feloniously did steal and take, from and out of a certain bag of letters then and there sent and conveyed by the post, to wit, by the post from Altringham, in the county palatine of Chester, for and towards Manchester, in the county palatine of Lan-

caster, divers, to wit, two other packets sent by the post, to wit, by the post from Altrincham, in the county palatine of Chester, that is to say, one packet for and to be delivered to certain persons at Newark, in Nottinghamshire, that is to say, the said William Caparn and Walter Hare, and one other packet, against the form of the statute, &c. and against the peace, &c.

93. *Indictment under the stat. 5 G. 3. c. 14. s. 6 (o). for stealing conies from grounds used for the breeding and keeping of conies.*

(Commencement as in pr. 1.)

Wilfully and wrongfully, in the night-time of the said day, that is to say, about the hour of ten in the night of the said day, did enter into a warren there situate, and then and there lawfully used for the breeding and keeping of conies, and then occupied by M. N. and did then and there wilfully and wrongfully take, in the night-time of the said day, that is to say, about the hour of ten in the night of the said day, thirty conies, of the price of 20 shillings, against the will of the said M. N. then and there being the occupier of the said warren, so as aforesaid then and there lawfully used for the breeding and keeping of conies, to the great damage of the said M. N. against the form, &c. and against the peace, &c.

(o) The stat. enacts, that if any person or persons shall wilfully and wrongfully, in the night-time, enter into any warren or grounds lawfully used or kept for the breeding or keeping of conies, although the same be not inclosed, and shall then and there wilfully and wrongfully take or kill, in the night-time, any coney or conies against the will of the owner or occupier thereof, or shall be aiding or assisting therein, and shall be convicted of the same before any of his majesty's justices of oyer and terminer, or general gaol deli-

very, for the county where such offence or offences shall be committed, every such person and persons so offending, and being thereof lawfully convicted, in manner aforesaid, shall and may be transported for the space of seven years, or suffer such other lesser punishment, by whipping, fine, or imprisonment, as the court before whom such person or persons shall be tried, shall in their discretion award and direct. See the stat. 3 J. 1. c. 13. 22 & 23 C. 2. c. 25. s. 4. 9 G. 1. c. 22.

(It may be proper to add a count for killing the conies, the language of which will be nearly the same with that of the first count.)

*94. Indictment for stealing a gelding, under the stat. 2 & 3 E. 6. c. 33 (p).*

One gelding, of the price of six pounds, of the goods and chattels of one J. D. then and there found and being, then and there feloniously did steal, take, and lead away, against the peace, &c.

*95. Indictment under the stat. 5 G. 3. c. 14. for stealing fish out of a park or paddock.*

That A. B. late of, &c. labourer, within six (q) calendar

(p) By stat. 1 E. 6. c. 12. s. 10. no person or persons who shall be convicted of feloniously stealing any horses, geldings, or mares, or being indicted or appealed thereof, and thereupon found guilty by verdict, or shall confess the same upon arraignment, or will not answer directly, or shall stand mute, shall have the benefit of clergy.

This stat. does not in terms extend to such as shall be outlawed, or shall challenge above twenty. The stat. 2 & 3 E. 6. c. 33. declares and enacts, that all persons feloniously taking or stealing any horse, gelding, or mare, shall not be admitted to the privilege of the clergy, but shall be put from the same in like manner and form as though they had been indicted for feloniously stealing of two horses, two geldings, or two mares, and thereupon found guilty by verdict, or confessed the same.

A person who shall apprehend, or prosecute to conviction, any horse-stealer, shall have a certificate, signed by the judge, to exempt him from serving all parish and ward offices. See stat. 10 and 11 W. 3. c. 23.

(q) Though the prosecution must be commenced within six calendar months, &c. this allegation does not appear to be necessary. See p. 55. 5 East, 259.

By 5 G. 3. c. 14. s. 1, if any person or persons shall enter into any park or paddock fenced in or inclosed, or into any garden, orchard, or yard adjoining or belonging to any dwelling-house, in or through which park or paddock, garden, orchard, or yard, any river or stream of water shall run or be, or wherein shall be any river, stream, pond, pool, moat, stew, or other water, and by any ways; means, or device



months next before the day of the taking of this inquisition, to wit, on, &c. with force and arms, at, &c. unlawfully did enter into a certain paddock, then and there fenced in and inclosed, called D. park, of and belonging to M. N. and in which said paddock there then was a certain pond of water, and then and there, to wit, on the said, &c. at, &c. feloniously did steal, take, kill, and carry away certain fish (*r*), to wit, twenty fish called carp, of the price and value of 20 shillings, and thirty fish called tench of the price and value of 20 shillings, then and there bred, kept, and preserved in such pond of water, without the consent of the said M. N. the owner of the said pond and fish, against the form, &c. and against the peace, &c. (*Add a count for destroying the fish preserved in the same pond.*)

96. *Indictment for felony, under the stat. 9 G. 1. c. 22 (s). for appearing armed and disguised, and stealing deer in an inclosed park.*

(*Commencement as in pr. 1.*) Being armed with

whatsoever, shall steal, take, kill, or destroy any fish, bred, kept, or preserved in any such river, or stream, pond, pool, moat, stew, or other water aforesaid, without the consent of the owner or owners thereof; or shall be aiding or assisting in the stealing, taking, killing, or destroying any such fish, as aforesaid, or shall receive or buy any such fish, knowing the same to be so stolen or taken, as aforesaid; and being thereof indicted within six calendar months next after such offence or offences shall have been committed, before any judge or justices of goal delivery for the county wherein such park or paddock, garden, orchard, or yard, shall be, and shall on such indictment be, by verdict,

or his or their own confession or confessions, convicted of any such offence or offences as aforesaid, the person or persons so convicted shall be transported for seven years.

(*r*) The fish may be described as being the prosecutor's property, but this is not necessary. See p. 182. and see *Hunsdon's case*, East. P. C. 611: where the fish were laid to be of the goods and chattels of the prosecutor; but it was holden that the averment might be rejected as surplusage.

(*s*) By 9 Geo. 1. c. 22. s. 1. it is enacted, that if any person or persons, being armed with swords, fire-arms, or other offensive weapons, and having his or their faces blacked, or

pistols and other offensive weapons, having their faces blacked and disguised, with force and arms, at the parish

being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds, inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or in any warren or place where hares or conies have been or shall be usually kept, or in any high road, open heath, common, or down; or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal, any red or fallow deer; or unlawfully rob any warren or place where conies or hares are usually kept; or shall unlawfully steal or take away any fish out of any river or pond; or if any person or persons, from and after the said first day of June, shall unlawfully and wilfully hunt, wound, kill, destroy, or steal, any red or fallow deer\*, fed or kept in any places in any of his majesty's forests or chases, which are or shall be inclosed with pales, rails, or other

fences, or in any park, paddock, or grounds inclosed, where deer have been or shall be usually kept; or shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed; or shall unlawfully and maliciously kill, maim, or wound any cattle, or cut down, or otherwise destroy, any trees, planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit; or shall set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood; or shall wilfully and maliciously shoot at any person in any dwelling-house or other place; or shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing; or shall forcibly rescue any person being lawfully in custody of any of-

\* This branch of the statute is repealed by the stat. 16 G. 3. c. 30. See *Davies's case*, Leach, 306.; but, by the stat. 42 G. 3. c. 107. if any person shall course or hunt, or shall take in any slip, noose, toil, or snare, or shall kill, wound, or destroy, or shall shoot at, or otherwise attempt to kill, wound, or destroy, or shall carry away any red or fallow deer, in any forest, chase, purlieu, or ancient walk, whether inclosed or not, or in any enclosed park, paddock, wood, or other enclosed ground, where deer are, have been, or shall be, usually kept, without the consent of the owner, or without being otherwise duly authorised, or shall be aiding, abetting, or assisting therein or thereunto, every person so wilfully offending as aforesaid, in any of the cases above mentioned, shall be deemed and taken to be guilty of felony, and being lawfully convicted thereof, upon indictment, shall be adjudged to be transported for the term of seven years.

aforesaid, in the county aforesaid, in a certain park, there lying and being, (inclosed with wooden pales, where deer had been usually and then were kept, belonging to M. N.) unlawfully and feloniously did enter and appear, and one fallow deer of the price of forty shillings, of the goods and chattels of the said M. N. in the same park then and there being found, with force and arms, then and there unlawfully, wilfully, and feloniously did hunt, wound, kill, destroy, steal, take, and carry away, against the form of the statute, &c. and against the peace, &c.

*97. Indictment for killing a sheep, with an intent to steal part of the carcase, under the stat. 14 G. 2. c. 6. s. 1. (t).*

One sheep, of the price of 20 shillings, of the goods

ficer or other person, for any the offences before mentioned; or if any person or persons shall, by gift or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death, as in cases of felony without benefit of clergy. Made perpetual by 31 G. 2. c. 42.

By sec. 13. prosecutions to be commenced within three years from the time of the offence committed, and not after.

By sec. 14. every offence that shall be done or committed contrary to the act, shall and may be inquired of, examined, tried, and determined in any county within the kingdom of England, in such manner and form as if the fact had been therein committed.

By the same section, no attainder for any offences made felony by virtue of this act, shall work any corruption of blood, loss of dower, or forfeiture of lands or tenements, goods or chattels.

(t) The stat. enacts, that if any person or persons shall feloniously drive away, or in any other manner feloniously steal, one or more sheep, or other cattle, of any other person or persons whatsoever, or shall wilfully kill one or more sheep, or other cattle, of any other person or persons whatsoever, with a felonious intent to steal the whole carcase or carcasses, or any part or parts of the carcase or carcasses, of any one or more sheep, or other cattle, that shall be so killed, or shall assist or aid any person, &c. to commit such offence or offences, the person guilty, &c. being thereof convicted, shall be ad-

and chattels of C. D. then and there being found, then and there wilfully and feloniously did kill, with a felonious intent to steal part of the carcase, that is to say, the inward fat, of the said sheep, against the form, &c. and against the peace, &c.

98. *For stealing shrubs from a garden (u).*

On, &c. in the night-time, to wit, about the hour of

judged guilty of felony without benefit of clergy.

The words cattle are, by the stat. 15 G. 2. c. 34. declared to mean and extend to any bull, cow, ox, steer, bullock, heifer, calf, or lamb, as well as sheep.

Cooke was indicted for stealing a cow; upon evidence it appeared that the beast was an heifer; and the judges held, that since the statute particularly mentions heifer as well as cow, the description was improper. Cooke's case, Leach, 123. East. P. C. 617.

If a person remove sheep or lambs from the place in which they are kept, and afterwards kill them, with intent, &c. he may be indicted for stealing them, for the larciny is completed by the removal, Rawlins's case, East. P. C. 617. Crompt. 36. pl. 17.

(u) By 6 G. 3. c. 36. s. 1. every person who shall, in the night-time, pluck up, dig up,

break, spoil, or destroy or carry away any root, shrub, or plant, or roots, shrubs, or plants of the value of 5s. and which shall be growing, standing, or being in the garden ground, nursery ground, or other inclosed ground of any person or persons whatsoever, shall be deemed guilty of felony; and the court shall have authority to transport the offender for seven years\*. And by the same statute, those who shall wilfully aid and assist therein, or who shall receive such roots, &c. of the value aforesaid, knowing the same to be stolen, shall be subject to the same penalty as if they had stolen the same. By another statute passed the same sessions, (c. 48. s. 3.) to pluck up, cut, spoil, or destroy, or take or carry away any root, shrub, or plant, roots, &c. out of the fields, nurseries, gardens, or other garden grounds, or other cultivated lands of any person

\* The court is not bound to pass sentence of transportation under this statute, but may pass any other sentence applicable to a single larciny. Leach, 541. East. P. C. 589.

12 in the night of the same day, with force and arms, — shrubs called — of the value of 5s. and — plants called — of the value of 5s. then and there growing in a certain garden ground of E. F. there situate, and then and there being the property of the said E. F. did feloniously pluck up and steal, take, and carry away, against the form, &c. and against the peace, &c.

99. *Indictment for stealing a chose in action, under the stat. 2 G. 2. c. 25 (x).*

*The property may be described generally, as one bank note for the payment of one pound, and of the value of one pound, then and there being the property of E. F. the said sum of money secured thereby then and there remaining due and unsatisfied to the said E. F. In the case of a bill of exchange, it may be described as one bill of exchange for the payment of 20 pounds and of the value, &c. as before.*

or persons, without consent of the owner, is an offence punishable, in the first instance, by a fine not exceeding 40s. in the second not exceeding 5*l.*; but if a person so convicted, offend a third time, and be convicted, he shall be deemed guilty of felony. This stat. it has been holden, did not repeal the former, which embraces those offences only which are committed in the night-time, and where property amounts to 5s. *R. v. Hitchcock and Howe, Leach, 541.*

By the stat. 6 G. 3. c. 36. The destroying, damaging, or stealing of timber trees, in the night time, and without the consent of the owner, is felony,

and punishable by transportation for seven years.

And aiders and abettors are subject to the like punishment.

By the stat. 6 G. 3. c. 48. the same offence (without limitation to *the night*) is punishable by a fine, not exceeding 20*l.* on conviction for the first offence, before one justice, by a fine not exceeding 30*l.* for the second, and if a person so convicted offend a third time, he shall be deemed guilty of felony.

(x) See the observations, p. 183. *R. v. Milnes, supra*, p. 429. *R. v. Johnston, supra*, p. 431. note (n), and the precedent, p. 430. The indictment must conclude against the form of the statute.

100. *Indictment for stealing above the value of forty shillings in a dwelling-house.*

(Commencement as in *pr. 1 and 87.*) Of the goods and chattels of one E. F. in the dwelling-house (z) of him the said E. F. then and there being found, then and there feloniously did steal, take, and carry away, against the peace, &c. (a).

101. *Indictment of felony for stealing above the value of five shillings in a shop (b).*

(Commencement as in *pr. 87.*) Of the goods and chat-

(z) The owner's name is essential, see p. 177.; and the act does not extend to a stealing in the defendant's own dwelling-house, *R. v. Macdaniel and Thompson*, Leach, 379. *Gould's case*, Leach, 257. *East. P. C. 644.*; and it must be such as a burglary may be committed in. *Dalton*, ch. 58. *R. v. Davis*, alias Silk, *East. P. C. 499.*

In *Campbell's case*, *East. P. C. 644.* the prisoner lodged at the house of the prosecutrix, who sent him a note, which she requested him to change; on pretence of procuring change, he left the house and absconded; and it was held by the judges, that the case was not within the act, since the property was not under the protection of the house. And the same was held in *Owen's case*, *East. P. C. 645.* who, pretending to have found a cross, decoyed the prosecutor into an house, and feloniously obtained 105 guineas from him. And the same was determined in the cases of *Cas-*

*tledina and Watson*, *East. P. C. 645, 6.* But bank notes are within the statute, *Dean's case*, Leach, 798. *Milne's case*, *East. P. C. 602.* *Sess. Pap. May, 1796*, p. 615.; for by the stat. 2 G. 2. c. 25. the stealing of such securities is placed on the same footing with stealing goods of like value with the sums secured.

(a) The stat. 12 Ann. stat. 1, ch. 7. s. 1. enacts, that any person who shall feloniously steal any money, goods, &c. of the value of forty shillings or more, being in a dwelling-house, or outhouse thereunto belonging, although such house or outhouse be not actually broken by such offenders, and although the owner of such goods, or any other person or persons, be not in such house or outhouse, or shall assist or aid any person to commit such offence, being convicted or attainted, by verdict or confession, &c. shall be absolutely debarred of clergy, &c.

(b) By stat. 10 & 11 Will. 3. ch. 23. s. 1. if any person shall,

tels (c) of one E. F. in the shop of him the said E. F. then and there being found, then and there *privately* and feloniously did steal, take, and carry away, against the peace, &c.

102. *Indictment for stealing in the dwelling-house to the amount of 40 shillings, putting the owner in fear, under the stat. 3 & 4 W. & M. c. 9. s. 1. (d).*

(Commence as in *pr. 1.*) One silver tankard, of the

at any time or times, by night or in the day-time, in any shop, warehouse\*, coach-house, or stable, *privately*† and *feloniously* steal any goods, wares, or merchandizes, being of the value of five shillings or more, (although such shop, &c. be not broken open, &c.) or shall assist, hire, or *command*‡ any person to commit such offence, &c. he shall not have the benefit of clergy.

(c) The goods stolen must be the property of the owner of the shop, &c. otherwise the offender does not lose his clergy; for this act was made as a remedy for the owners of the shops to preserve their goods for sale, &c. See Howard's case, *Fost. 77.* and Stone's case, *Leach, 375.*

It has been doubted whether the box-coat, or any part of the clothes of a coachman, can be considered as part of the proper or usual furniture of a stable, within the meaning of this act, which seems only to include bridles, saddles, horse-cloths, &c. *Fost. 78.* Sea's case, *Leach, 341.*

Money is not within the act, the words being "goods, wares, or merchandizes." *Fost. 79.* Mill's case, *Leach, 294.* See also Stone's case, *supra.*

(d) By this statute, "all and every person or persons, who shall rob any other person, or shall feloniously take away any goods or chattels being in any dwelling-house, the owner or any other§ person being there-

\* It has been held that a warehouse, in which goods are deposited for exportation, &c. and not for sale, is not within the meaning of this act. Howard's case, *O. B. 1751.* *Fost. 77.* *East. P. C. 642.* Godfrey's case, *Leach, 392.*

† And, therefore, if any force be used, the case is not within this act. *Fost. 79.* *East. P. C. 641.* Cartwright's case. But the stat. 3 & 4 W. & M. c. 9. s. 1. extends to breaking in.

‡ This word comprehends those who invite, procure, or stir up any other person to do the fact. *Fost. 126.* 1 *Hale, 555.* 2 *Haw. c. 33. s. 65. 68.*

§ It has been doubted whether it is not necessary that some person in the dwelling-house should be put in fear, *East. P. C. 634.* in analogy to Lord Coke's construction of a similar clause in the stat. 1 *E. 6. c. 12.*

value of fifty (e) shillings, of the goods and chattels of E. F. in the dwelling-house of E. F. there situate, then and there being found, feloniously did steal, take, and carry away; and him the said E. F. then and there being in the said dwelling-house, did then and there put in bodily fear (f) of his life, against the form of the statute, &c. and against the peace, &c.

103. *Indictment for stealing plate out of the chapel belonging to Magdalen College, in Oxford, against the principal and the accessories before the fact (g).*

(Commencement as in *pr.* 1.) About the hour of one in the night of the same day, with force and arms, at the parish aforesaid, in the city and county aforesaid, a certain chapel and mansion-house of God, there situate, called Magdalen College Chapel, feloniously and burg-

in, or put in fear, or shall rob\* any dwelling-house in the day-time, any person being therein; or shall comfort, aid, abet, assist, counsel, hire, or command, any person or persons to commit any of the said offences, or to break any dwelling-house, shop, or warehouse thereunto belonging, or therewith used in the day-time, and feloniously take away any money, goods, or chattels, of the value of 5*s.* or upwards, therein being; although no person shall be within such dwelling-house, shop, or warehouse, be-

ing thereof convicted or attainted, &c. shall not have the benefit of clergy.

(e) Unless the taking amount to a robbery, it is essential, it has been said, that the value of the goods taken should exceed one shilling. 2 Hale, 532. East. P. C. 634.

(f) It is essential to aver, that the person in the dwelling-house was put in fear by the prisoner. *R. v. Etherington and Brook*, Leach, 771. East. P. C. 635.

(g) From the Crown Circuit Assistant, p. 177.

\* The word *robbing* implies a *breaking*. East. P. C. 636. 1 Hale, 548. Kel. 68. 69; but under this branch of the statute, it is not necessary to allege a robbery in technical words, that is, with violence from the person; but it is sufficient to oust the offender to allege a breaking of the house and taking goods there, such a person being therein. 1 Hale, 522. 2 Hale, 354. 2 Haw. c. 33. s. 93. The breaking must be such as would amount to a burglary, if committed in the night-time. 1 Hale, 523. 526. 2 Hale, 355. 357, 8. Fost. 108. And the same rule seems to prevail, as to what shall be deemed a dwelling-house. East. P. C. 637.



lariously did break and enter, and one pair of silver candlesticks gilt with gold, of the value of seven pounds; one pair of metal candlesticks gilt with gold, of the value of three pounds; and one communion silver dish gilt with gold, of the value of fifteen pounds, of the goods and chattels of the president and scholars of Saint Mary Magdalen college, in the university of Oxford, in the said chapel and mansion-house then and there being found, feloniously and burglariously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity: and the jurors aforesaid, upon their oath aforesaid, do further present, that T. G. late of the parish aforesaid, in the city and county aforesaid, labourer, and W. M. late of the same, labourer, before the committing of the said felony and burglary in manner and form aforesaid, to wit, on the said twenty-fourth day of February, in the year aforesaid, with force and arms, at the parish aforesaid, in the city and county aforesaid, did feloniously and maliciously incite, move, procure, aid and abet, counsel, hire, and command the said M. W. to do and commit the said felony and burglary in manner and form aforesaid, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. (*Commencement as in pr. 5.*) One pair of silver candlesticks gilt with gold, of the value of seven pounds; one pair of metal candlesticks gilt with gold, of the value of three pounds; and one communion silver dish gilt with gold, of the value of fifteen pounds, of the goods and chattels of the said president and scholars of Saint Mary Magdalen College aforesaid, in the same chapel of the same college then and there being found, then and there feloniously and *sacrilegiously* did steal, take, and carry away, against the form, &c. and against the peace, &c.; and the jurors aforesaid, upon their oath aforesaid, do further present, That, (*charging T. G. and W. M. as accessories before the fact to the felony and sacrilege.*) (*3rd count, commencement as in pr. 5.*) about the hour of one in the night of the same day, with force and arms, at Magdalen-college, in the city and county aforesaid, a certain chapel and mansion-house of God, there situate, called Magdalen College Chapel, feloniously and burglariously did break and enter, and one pair, &c. (*here set out the goods as before,*) of the goods and chattels of the president and scholars of Saint Mary Magdalen College

aforesaid, in the said chapel and mansion-house then and there being found, feloniously and burglariously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity: and the jurors aforesaid, &c. *charging T. G. and W. M. as accessories before the fact to the felony and burglary.* (4th count, commencement as in pr. 5.) at Magdalen College aforesaid, in the city and county aforesaid, one pair, &c. (*here set out the goods as before,*) of the goods and chattels of the president and scholars of Magdalen College aforesaid, in the same chapel of the same college then and there being found, then and there feloniously and sacrilegiously did steal, take, and carry away, against the form of the statute, &c. and against the peace, &c. and the jurors aforesaid, &c. *charging T. G. and W. M. as accessories, before the fact, to the last mentioned felony and sacrilege.* (5th count, commencement as in pr. 5.) about the hour of one in the night of the same day, with force and arms, at Magdalen College aforesaid, in the university of Oxford aforesaid, in the county aforesaid, a certain chapel and mansion of God, there situate, called Magdalen College Chapel, feloniously and burglariously did break and enter, and one pair, &c. (*here set out the goods as before*) of the goods and chattels of the said president and scholars of Magdalen College aforesaid, in the said chapel and mansion-house then and there being found, feloniously and burglariously did steal, take, and carry away, against the peace, &c. and the jurors aforesaid, &c. *charging T. G. and W. M. as accessories before the fact, to the last-mentioned felony and burglary.* (6th count, commencement as in pr. 5.) at Magdalen college aforesaid, in the university of Oxford aforesaid, in the county aforesaid, one pair, &c. (*here set out the goods as before*) of the goods and chattels of the said president and scholars of Magdalen College aforesaid, in the same chapel of the same college then and there being found, then and there feloniously and sacrilegiously did steal, take, and carry away, against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid, &c. (*charging T. G. and W. M. as accessories before the fact to the last-mentioned felony and sacrilege.*)

104. *Indictment of felony for sacrilege, in stealing goods out of a church.*

(Commencement as in *pr.* 1.) One silver cup, of the value of six pounds, of the goods and chattels of the parishioners of the said parish (in the custody of W. T. and D. E. then churchwardens of the same parish), in the church of the parish aforesaid then and there being found, then and there feloniously and sacrilegiously did steal, take, and carry away, against the form of the statute, &c. (*h*) and against the peace, &c.

105. *Indictment for stealing from the person.*

(Commencement as in *pr.* 87 to the \*.) Of the goods and chattels of E. F. from the person of the said E. F. then and there feloniously did steal, take, and carry away, against the form, &c. and against the peace, &c. (*i*).

(*h*) The felonious taking of goods out of any parish church, or other church or chapel, is ousted of clergy as to the principal by stat. 23 Hen. 8. ch. 1. s. 3. 25 Hen. 8. ch. 3. s. 2. and, lastly by 1 Edw. 6. ch. 12. s. 10.

And by the stat. of 23 Hen. 8. the accessory before, if found guilty by verdict or confession, was ousted of clergy, but that stat. is repealed by the stat. 1 Edw. 6. as to all accessories.

The stat. of 4 & 5 Ph. & M. c. 4. does not extend to the case of sacrilege; for it takes away clergy from an accessory before the fact to robbery in any dwelling-house, &c. and does not mention robbing of churches and chapels; but if robbing a church, &c. should be attended with burglary, then clergy would be excluded from the accessories before, by

stat. 3 & 4 Will. & M. ch. 9. s. 1. 2 Hale, 366.

(*i*) By the stat. 48 G. 3. c. 129. s. 2. it is enacted, that every person who shall, at any time or in any place whatever, feloniously steal, take, and carry away any money, goods, or chattels, from the person of any other, whether privily, without his knowledge or not, but without such force or putting in fear as is sufficient to constitute the crime of robbery, or who shall be present aiding and abetting therein, shall be liable to be transported beyond the seas for life, or for such term not less than seven years as the judge or court, before whom any such person shall be convicted, shall adjudge; or shall be liable, in case the said judge or court shall think fit, to be imprisoned only, or to be

106. *Indictment of felony for robbery from the person.*

(Commencement as in *pr.* 1.) In the king's highway (*k*) there, in and upon one E. F. there being, (*l*) feloniously did make an assault, and him the said E. F. in bodily fear (*m*) and danger of his life, in the highway aforesaid, then and there feloniously did put, and one gold watch, of the value of eighteen pounds (*insert all the goods taken*) of the goods and chattels of the said E. F. from the person (*n*), and against the will (*n*), of the said E. F. in the highway aforesaid, then and there feloniously and (*n*) violently did steal, take, and carry away, against the peace, &c.

imprisoned and kept to hard labour in the common gaol-house of correction or penitentiary house for any term not exceeding three years.

By the first section of this act, the stat. 8 Eliz. c. 4. which takes away the benefit of clergy, in case of stealing privately from the person, is repealed.

(*k*) Benefit of clergy is taken away from those who shall rob any person, or shall comfort, aid, abet, assist, counsel, hire, or command, any person or persons to commit such offence. By the stat. 3 W. & M. c. 9, s. 1. and since the statute is general, and is not confined to a robbery in or near the highway as the stat. 1 E. 6. c. 12. is, it seems better to omit any special description of the place, though a variance from it would not be fatal. See Wardle's case, East, P. C. 785. R. v. Summers, ib. R. v. Daruford and Newton, ib. and see p. 176.

(*l*) It is essential to aver, that the assault was feloniously made, see p. 85.

(*m*) It is essential to aver, that the property was taken with violence from the person, and against the will of the party. Fost. 128. 1 Hale, 534. Leach, 229. The allegation that the party was put in fear is of modern introduction: and in Donnelly's case, Leach, 229. it was observed by the judges, that no technical description was necessary, provided it appeared on the whole, that the offence had been committed with violence, and against the will of the party. And in Smith's case, East, P. C. 783. the prisoner was charged with assaulting the prosecutor with force and arms, and putting him in corporal fear, and taking a sum of money from his person, against his will; it was objected, that the taking ought to have been alleged to have been done violently, but all the judges agreed, that a robbery was sufficiently described, and that Lord Hale (1 Hale, 534.) was inaccurate in his expression,

107. *Indictment for stealing linen from a bleaching-croft.*

(Commencement as in *pr.* 1.) Thirty yards of linen cloth, of the value of thirty shillings, of the goods and chattels of C. D. of the parish aforesaid, in the county aforesaid, whitster, then and there being laid, placed, and exposed to be bleached and whitened, in a certain field and ground of the said C. D. situate, lying, and being in the parish aforesaid, in the county aforesaid, then and there made use (n) of by the said C. D. for the bleaching and whitening of the same linen-cloth, then and there being found, then and there in the same field and ground feloniously did steal, take, and carry away, against the form of the statute, &c. and against the peace, &c.

(n) The stat. 51 G. 3. c. 41. enacts, that every person, who shall feloniously steal any linen, fustian, calico, cotton cloth, or cloth worked, woven, or made of any cotton, or linen yarn mixed, or any thread linen, or cotton-yarn linen, or cotton tape, inkle, filleting, laces, or any other linen, fustian, or cotton goods or wares, whatsoever, laid, placed, or exposed to be printed, whitened, bowked, bleached, or dried in any whitening or bleaching croft, lands, fields, or grounds, bowking-house, drying-house, printing-house, or other building, ground, or place made use of by any calico-printer, whitster, crofter, bowker, or bleacher, for printing, whitening, bowking, bleaching, or drying of the same, to the value of 10 shillings; or who shall aid or as-

sist, or wilfully or maliciously hire or procure any other person or persons to commit any such offence; or who shall buy or receive any such goods or wares so stolen, knowing the same to be stolen as aforesaid, being lawfully convicted thereof, shall be liable to be transported beyond the seas for life, or for such term not less than seven years as the judge, before whom any such person shall be convicted, shall adjudge; or shall be liable, in case the said judge shall think fit, to be imprisoned and kept to hard labour, in the common gaol-house of correction, or penitentiary-house, for any term not exceeding seven years.

By the first section of this statute, the 18th G. 2. c. 27. which takes away clergy from such an offender, is repealed.

108. *Indictment for stealing woollen cloth from the tenters.*

On, &c. with force and arms, in the night of the same day, to wit, about the hour of twelve of the night, at the parish aforesaid, in the county aforesaid, ten yards of woollen cloth called bocking, of the value of ten shillings, of the goods and chattels of J. B. (the same cloth then and there being put and being on tenters for the drying thereof,) feloniously did cut, steal, take, and carry away, from the said tenters, against the form of the statute, &c. and against the peace, &c. (o). (*Add a count for simple larciny.*)

109. *Indictment for stealing from a ship wrecked.*

That on, &c. a certain ship, called The Nymph, the property of a person or person to the jurors unknown, was stranded at the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, and that C. D. late of, &c. labourer, on, &c.

(o) By stat. 22 Car. 2. c. 5. s. 3. any person or persons, who shall be indicted for feloniously cutting and taking, stealing or carrying away, of any cloth or other woollen manufactures from the rack or tenter in the night-time, and thereupon found guilty by verdict, &c. *oust of clergy.*

By s. 4. the judges may re-prieve and transport them, &c.

By stat. 15 Geo. 2. c. 27. s. 1. in case any cloth or woollen goods remaining upon the rack or tenters, or any woollen yarn or wool left out to dry, shall be stolen or taken away in the night-time, it shall be lawful for a justice of the peace to issue his warrant to search the houses of suspected persons; and if any such property be found in their custody, they are to be taken be-

fore some justice, to whom they must give a satisfactory account, by evidence, respecting their right to the possession of the same; and on default thereof, they shall be deemed convicted, &c. and forfeit treble value to the owner, &c.

The third offence is felony, punishable by transportation for seven years; and if they return, they are ousted of clergy.

s. 3. "Provided, that this act shall not extend to alter or repeal any law now in force for the punishment of any person or persons stealing or receiving such cloth, woollen goods, woollen yarn, or wool, except in such cases where the proof is laid upon the offender or offenders as aforesaid; any thing herein contained to the contrary notwithstanding."

with force and arms, at, &c. wilfully and feloniously did plunder, steal, take, carry away, and destroy, one cask of rum, of the value of twenty pounds, then and there being certain goods and merchandizes, the property of a person or persons to the jurors aforesaid as yet unknown, from and belonging to the said ship, so then and there being stranded as aforesaid, against the form of the statute, &c. and against the peace, &c. (o).

110. *Indictment for stealing to the value of forty shillings in a ship on a navigable river (p).*

*After the owner's name in pr. 87, insert the words, "in a*

(o) By 26 Geo. 2. c. 19. s. 1. if any person shall plunder, steal, take away, or destroy any goods or merchandize, or other effects, from or belonging to any ship or vessel which shall be in distress, or which shall be wrecked, lost, stranded, or cast on shore, in any part of his majesty's dominions, or any of the furniture, &c. or part of such ship or vessel, or shall beat or wound, with intent to kill or destroy, or shall otherwise wilfully obstruct the escape of any person endeavouring to save his life from such ship or vessel, or the wreck thereof; or if any person or persons shall put out any false light or lights, with intention to bring any ship or vessel into danger; then such person or persons so offending shall be deemed guilty

of felony without benefit of clergy.

And by s. 2. when goods or effects of small value shall be stranded, lost, or cast on shore, and shall be stolen without circumstances of cruelty, outrage, or violence, the offender may be prosecuted and punished as for petit larciny.

(p) To steal any goods\*, wares, or merchandize, of the value of 40 shillings, in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river, or in any port of entry or discharge, or any creek belonging to any navigable river, &c. or upon any wharf or quay adjacent to any navigable river, &c. or to be present aiding and assisting, &c. is an offence excluded from clergy by the stat. 24 G. 2. c. 45.

\* The statute is confined to such goods or merchandizes as are usually lodged in ships, or on wharfs or quays. A defendant, who stole a quantity of coin, though great part of it was foreign, and not current by proclamation, but commonly current, was held not to be within the act. *R. v. Grimes*, *Fost.* 79. *East. P. C.* 647. *Leigh's case*, *Lea* 34, 62.

certain ship, called *The Nymph*, upon the navigable (q) river Thames," and conclude as in the same precedent.

111. *Indictment for stealing lead fixed to a dwelling-house.*

(*Comm. as in pr. 1.*) Sixty pounds weight of lead, of the value of four shillings, belonging to C. D. and then and there fixed to the dwelling-house of the said C. D. from the said dwelling-house then and there did feloniously rip, steal, take, and carry away, against the form of the statute, &c. and against the peace, &c. (r).

(q) An averment that the offence was committed *on the navigable river Thames* is not satisfied by evidence, that it was committed on the banks of one of its creeks; for though the offence is within the act, it should be described in the appropriate words of the act. Leach, 35.

(r) The ripping, taking, and carrying away lead, or any other thing fixed to a freehold, was formerly but a misdemeanor; but now, by stat. 4 Geo. 2. c. 32. to steal, rip, cut, or break, with intent to steal, any lead or iron bar, iron grate, iron palisado, or iron rail whatsoever, fixed to any dwelling-house, outhouse, coach-house, stable, or other building used or occupied with such dwelling-house, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house or other building, is felony; and every such felon shall be subject to the like pains and penalties, as in case of felony; and the court, before whom such person, &c. shall be tried, shall

have power to transport such felon for seven years. And so it is in the aiders, abettors, and assistants, and such as shall buy or receive such lead or iron, knowing the same to be stolen.

Principals to be transported for seven years. Accessories to have the like punishment.

The indictment must conclude *against the form of the statute*, being a felony created by it. See p. 215.

The stat. 21 G. 3. c. 68. extends the provisions of this act, and enacts, that those who steal, rip, cut, or break, with intent to steal, any copper, brass, or bell-metal utensil or fixture, being fixed to any dwelling-house, &c. or any iron rails or fixing, set up or fixed in any square, court, or other place, such person having no title or claim of title thereto, shall be deemed and construed to be guilty of felony. The punishment—to be transported for seven years, or to be kept and detained in prison and kept to hard labour for any time not exceeding three years, nor less than one



112. *Against the receiver.*

And the jurors aforesaid, upon their oath aforesaid, do further present, That E. F. late of, labourer, afterwards, to wit, on, &c. at, &c. the said sixty pounds weight of lead, so as aforesaid feloniously stolen, feloniously did receive and have, (he the said E. F. then and there well knowing the said sixty pounds weight of lead to have been feloniously stolen), against the form of the statute, &c. and against the peace, &c. (s).

year, and within that time, if the court shall think fit, to be publicly whipped, not more than three times.

Those aiding, abetting, or assisting, in such offence, to be subject to the like punishment. Receivers to be subject to the same punishment as if they had stolen the same, although the principal felon or felons has not or have not been convicted.

A church is a *building* within the meaning of the stat. 4 Geo. 2. c. 32. *R. v. Parker and Easy*, Suffolk Summ. Ass. June, 1782. East. P. C. 592. and *R. v. Hickman and Dyer*, Leach, 358. East. P. C. 593. For the description of the property in such case, see p. 189.

In *Davis's case*, East. P. C. 593. the indictment charged the defendant with stealing iron rails, fixed to a tomb in a church-yard, belonging to a certain building called Islington Church. It appeared that the tomb was not connected by any building with the church, and it was holden that the case

was not within the statute; but qu. whether this case is not within the stat. 21 G. 3. c. 67. *supra*, which contains the words "iron rails set up or fixed in any court or other place."

In *Senior's case*, Leach, 559. East. P. C. 593. it was holden, that a window casement, made of wire, lead, and glass, was not within these statutes.

Where the value of the property, under the 4th of G. 2. does not exceed one shilling, judgment of whipping may be given, as in case of petit larceny, East. P. C. 594. And if the value exceed one shilling, judgment of imprisonment may be given, *Munday's case*, Leach, 991. East. P. C. 594.

(s) See note (r), p. 453.

By 25 Geo. 2. c. 10. persons entering mines of *black lead* with intent to steal, or who shall from thence steal any *black lead*, &c. and their aiders and abettors, are to be deemed felons; and may, upon conviction, be committed to prison for a year, and publicly whipt, or transported for seven years; and the receivers of

**113. *Indictment against several persons, for piratically taking and carrying away a ship, with its tackle, &c. and certain goods on board the same (t).***

*Admiralty (u) of England.* With force and arms, upon the high seas (x), in a certain place, distant about ten leagues from Cutsheen, in the East Indies, and within the jurisdiction (x) of the admiralty of England, did piratically and feloniously (x) set upon, board, break, and enter a certain merchant ship, called The Quedagh Merchant, then being a ship of certain persons (to the jurors aforesaid as yet unknown), and then and there piratically and feloniously did assault certain mariners (whose names to the jurors aforesaid are also unknown) in the same ship, and in the peace of God and our said sovereign lord the king then and there being, and did then and there, upon the high sea aforesaid, in the place aforesaid, and within the jurisdiction aforesaid, piratically and feloniously put the said mariners (to the jurors aforesaid as yet unknown), so being in the same ship, in great bodily fear and danger of their lives; and the said merchant ship, called The Quedagh Merchant, and the apparel and tackle of the same ship, of the value of four hundred pounds, of lawful money of Great Britain, together with seventy chests of opium, of the value of fourteen hundred pounds, of like lawful money, then being in and on board the same ship, of the goods and chattels of certain persons (to the jurors aforesaid as yet unknown), and then and there, upon the high sea aforesaid, in the place aforesaid, and within the jurisdiction aforesaid, being under the care and custody, and in the pos-

such lead, &c. knowing the same to have been stolen, shall, upon conviction, suffer the same pains and penalties as are inflicted upon persons receiving any stolen goods or chattels. And by the same statute it is also enacted, that if the principals or their aiders, so committed or transported, shall voluntarily escape or break prison, or return from trans-

portation before, &c. they shall, upon conviction, suffer death, without benefit of clergy.

(t) This was the indictment used against Kidd and others, 5 St. Tr. 287.

(u) As to the trial see p. 15.

(x) These averments are essential, see p. 19. 73. 1 Haw. c. 37. s. 6. 10. East. P. C. 805. 3 Ins. 112.

session of the said mariners, (to the jurors aforesaid as yet unknown,) they the said William Kidd, &c. (*the names of all the pirates*) with force and arms, from the care, custody, and possession of the said mariners (to the jurors aforesaid as yet unknown) then and there, to wit, upon the high sea aforesaid, in the place aforesaid, and within the jurisdiction aforesaid, piratically, feloniously, and against the will of the said last-mentioned mariners, did steal, take, and run away with, against the peace of our said lord the king, his crown and dignity (*y*).

114. *Indictment against an accessory, before the fact, to a felony.*

*After charging the principal felon, proceed thus.* And the jurors aforesaid, upon their oath aforesaid, do further present, that L. M. late of, &c. labourer, before the committing the said felony and murder, (*or burglary, &c. as the case is,*) in form aforesaid, to wit, on, &c. with force and arms, at, &c. did feloniously and maliciously incite, move, procure, aid, counsel, hire, and command (*z*) the said A. B. to do and commit the said felony and \_\_\_\_\_ in manner and form aforesaid, against the peace, &c.

115. *Indictment against an accessory for receiving the principal felon.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that L. M. late of, &c. labourer, well

(*y*) By the st. 32 G. 2. c. 25. s. 20. a session of oyer and terminer and gaol delivery for the trial of offences committed upon the high seas, within the jurisdiction of the admiralty of England, shall be holden twice at least in every year, viz. in March and October, at the Old Bailey, except when sessions of oyer and terminer and gaol delivery for London and Middlesex, shall be there holden, or in such other places in England as the lord high admiral, &c. shall, in writing

under his hand directed to the judge of the court of admiralty, appoint.

In prosecutions of this nature, the indictment is first found by a grand jury of twelve men, and afterwards tried by another jury, as at common law. 4 Bl. Comm. 269. 3 Ins. 114. East. P. C. 812. See the stat. 28 H. 8. c. 15. and the statutes dependent upon it, p. 15, 16, 17.

(*z*) Vide supra, p. 130, 131, 132. and pr. 23.

knowing the said A. B. to have done and committed the said felony and burglary (*according to the fact*) in form aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. him the said A. B. did feloniously receive, harbour, and maintain, against the peace, &c.

116. *Indictment against an accessory for receiving stolen goods.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that L. M. late of, &c. labourer, afterwards, to wit, on, &c. with force and arms, at, &c.\* one silver watch, one gold ring, &c. (a) being parcel of the goods and chattels so as aforesaid feloniously and burglariously stolen, taken, and carried away, feloniously did receive and have (he the said L. M. then and there well knowing the said goods and chattels last mentioned to have been feloniously and burglariously stolen, taken, and carried away,) against the form (b), &c. and against the peace, &c.

117. *Indictment against an accessory for receiving goods in one county, the principal having been convicted in another county (c).*

*Middlesex.* The jurors for our lord the king upon their oath present, that at the delivery of the gaol of our lord the king of his county of Surrey, holden at Kingston upon Thames, in and for the county aforesaid, on, &c. before William earl of Mansfield, lord chief justice of our lord the king, assigned to hold pleas in the court

(a) If he received the whole of the goods alleged to have been stolen, merely insert "*the said goods and chattels.*" The description of the property alleged to be received, should agree with that charged to have been stolen; but it is sufficient that it appear to be in fact the same, though it pass under a different denomination,—as if the principal

be charged with stealing a live sheep, and the defendant with receiving 20lb. of mutton, part of the goods stolen. Cowell and Green's case, East. P. C. 381. and see tit. Surplusage, p. 235.

(b) 3 W. & M. c. 9. s. 4. See p. 460.

(c) This indictment is authorized by the st. 2 and 3 E. 6. c. 24. see p. 7.

of our said lord the king, before the king himself, and Sir William Henry Ashhurst, knight, one other of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, then justices of our said lord the king, assigned to deliver the said gaol of the prisoners therein being, M. T. late of the same parish of Lambeth, in the said county of Surrey, labourer, was duly convicted (*d*); for that he the said M. T. &c. on, &c. with force and arms, at, &c. seventeen yards of linen cloth, of the value of thirty shillings, of the goods and chattels of one T. W. then and there being found, feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity, as by the record thereof remaining filed in the said court of gaol delivery, may more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, do further present, that A. B. late of, &c. in the county of Middlesex, labourer, afterwards, to wit, on, &c. with force and arms, at, &c. (*and then proceed as in pr. 116 from the \*.*)

118. *Indictment for a misdemeanor, in receiving stolen goods (e).*

(*Comm. as in pr. 1.*) One silver tankard, of the value

(*d*) It is not necessary to allege, that the principal was *attainted*. Hyam's case, East. P. C. 782.; as to this form of indictment, see p. 157. Qu. whether it ought not expressly to aver the commission of the felony in the first county. See p. 157. 130. Lord Sanchar's case, 9 Co. 114.

(*e*) See the different statutes, p. 460. n. (*k*).

If the prisoner can be indicted as an accessory to a felony, he ought not to be tried for a misdemeanor, for the prosecutor has no election. See Fost. 374. and per Thomp-

son, Baron, Lanc. Lent Ass. 1813. contrary to what is said in the case of R. v. Pollard and Taylor, 2 Ld. Ray, 1730. and in Jonathan Wild's case, East. P. C. 746. where, upon an indictment under the stat. 5 Ann. for a misdemeanor, it appeared that the principal had been convicted, it was holden, that the defendant ought to be acquitted. In Wilkes's case, Leach, 121. East. P. C. 746. it appeared, that the prosecutor might at one time have taken the principal into custody, but had neglected so to do; and that he could not after-

of six pounds (*f*), of the goods and chattels of one C. D. by one E. F. (*g*) then lately before (*h*) feloniously stolen of the said E. F. unlawfully, unjustly, and for the sake of wicked gain did receive and have, (the said A. B. then and there well knowing the same to have been feloniously stolen,) against the form of the statute (*i*), &c. and against the peace, &c.

119. *Indictment against two for unlawfully receiving stolen lead, under the stat. 29 G. 2. c. 30. s. 1. See p. 460, note (k).*

(*Commencement as in pr. 1.*) Unlawfully and unjustly did buy and receive, and each of them did buy and receive, ten pounds weight of lead, of the value of two shillings, of the goods and chattels of one E. F. then lately before feloniously stolen, taken, and carried away by one G. H. they the said A. B. and C. D. then and there well knowing the same to be stolen and unlawfully come by, against the form of the statute, &c. and against the peace, &c. (*Second count.*) to wit, on, &c. with force and arms, at, &c. unlawfully and unjustly, and in a clandestine manner, that is to say, by, (*set out the manner,*) did buy and receive, from the aforesaid G. H. other ten pounds weight of lead, of the value of two shillings, of the goods

wards be met with: the defendant was indicted under the stat. 5 Ann. for a misdemeanor, and a majority of the judges were of opinion, since the conviction was proper; that the word *cannot*, in the statute, relates to the time of the prosecution. But by the 22 G. 3. c. 58. the receiver may be prosecuted for the misdemeanor, whether the principal be amenable to justice or not. It never has been held necessary to allege in the indictment, that the principal could not be taken, &c. *Baxter's case*, 5 T. R. 83. 2 *Ld. Ray.* 1370. *East. P. C.* 731. or that he had not been convicted, see p. 28. 160.

(*f*) An indictment, under the stat. 22 G. 2. c. 58. s. 1. against the receiver for a misdemeanor, will lie, though the felony amount to petit larceny only. *Baxter's case*, 5 T. R. 83. *Leach*, 660.

(*g*) The name of the principal need not be stated in an indictment against the receiver for a misdemeanor. See p. 157. and *Thomas's case*, *East. P. C.* 781. *Baxter's case*, 5 T. R. 83. but if known ought to be stated, *East. P. C.* 783.

(*h*) It is unnecessary to allege the stealing of the goods, with time or place. *R. v. Stott*, *East. P. C.* 780.

(*i*) See the next note.

and chattels of the aforesaid E. F. lately before feloniously stolen, taken, and carried away by certain ill-disposed persons, to the said jurors unknown, against the form of the statute, &c. and against the peace, &c. (k).

(k) By stat. 3 Will. & M. ch. 9. s. 4. buyers and receivers of stolen goods, knowing them to be stolen, are to be deemed accessories after the fact, and suffer as such.

By 1 Ann. stat. 2. c. 9. s. 2. whosoever shall buy or receive stolen goods, knowing them to be stolen, may be prosecuted for a misdemeanor, and punished by fine and imprisonment, though the principal felon be not convicted.

And this will exempt them from being punished as accessories, if the principal shall afterwards be convicted.

By stat. 5 Ann. c. 31. s. 5. if any person shall receive or buy any goods or chattels, that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, or shall receive, harbour, or conceal, any burglars, felons, or thieves, knowing them to be so, he shall be taken as accessory to the said felony or felonies, and being legally convicted, &c. shall suffer death as a felon.

And by sec. 6. if any such principal felon cannot be taken so as to be prosecuted or convicted for any such offence, yet, nevertheless, it shall and may be lawful to prosecute and punish every such person buying or receiving any goods stolen by such principal felon, knowing the same to be stolen,

as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment as the court shall think fit, although the principal felon be not before convicted of the said felony, which shall exempt the offender from being punished as accessory, if such principal felon be afterwards taken and convicted.

By stat. 4 Geo. 1. c. 11. receivers of stolen goods may be transported for fourteen years; but they must pray the benefit of the statute, East. P. C. 744. and the felony must be such as admits of accessories at common law, Fost. 73. East. P. C. 744. but this has been supplied by the stat. 22 G. 3. c. 58. cited below.

By stat. 4 Geo. 2. c. 32. to steal, rip, cut, or break, with intent to steal any lead or iron bar, iron grate, iron palisado, or iron rail whatsoever, fixed to any dwelling-house, out-house, coach-house, stable, or other building, used or occupied with such dwelling-house, or fixed in any garden, orchard, courtyard, fence, or outlet, belonging to any dwelling-house or other building, is felony: and so it is in the aiders, abettors, and assisters, and such as shall buy or receive such lead or iron, knowing the same to be stolen.

Principals to be transported.

*120. Indictment of felony for receiving money to help a person to stolen goods, and not apprehending the felon.*

That on, &c. at, &c. a certain person, to the jurors un-

for seven years. Accessories to suffer the like punishment.

By stat. 29 Geo. 2. c. 30. s. 1. every person who shall buy or receive any lead, iron, copper, brass, bell-metal, or solder, knowing the same to be stolen, or unlawfully come by, or shall privately buy or receive any stolen lead, &c. by suffering any door, window, or shutter to be left open or unfastened, between sun-setting and sun-rising, for that purpose, or shall buy or receive the same, or any of them, at any time, in any clandestine manner, shall be transported for fourteen years, although the principal felon has not been convicted of stealing the same.

By 21 Geo. 3. c. 69. every person who shall buy or receive any pewter pot or other vessel, or any pewter in any form or shape whatsoever, knowing the same to be stolen or unlawfully come by, &c. shall, upon conviction, be transported as a felon for seven years.

And by stat. 10 G. 3. c. 48. every person who shall buy or receive any stolen jewel or jewels, or any stolen gold or silver plate, watch or watches, knowing the same to have been stolen, shall, in all cases where such jewel or jewels, or gold or silver plate, shall have been feloniously stolen, accompanied with a burglary actually

committed in stealing the same, or shall have been feloniously taken by a robbery on the highway, be triable as well before conviction of the principal felon, whether he be in or out of custody, as after his conviction; and if such person so buying or receiving shall be convicted thereof, he shall be guilty of felony, and transported for fourteen years.

By the stat. 21 G. 3. c. 69. persons receiving any pewter, knowing, &c. although the principal felon has not been convicted, shall, upon conviction, be transported in like manner as other felons are directed to be transported, for seven years, or imprisoned and kept to hard labour for any time not exceeding three years, nor less than one year; and within that time, if the court shall think fit, may be once or oftener, but not more than three times, publicly whipped.

And by 22 Geo. 3. c. 58. s. 1. it is enacted, that from and after the 1st day of August, 1782, in all cases whatsoever, where any goods or chattels, (except lead, iron, copper, brass, bell-metal, and solder,) shall have been feloniously taken or stolen, whether the offence of the person or persons so taking or stealing the same, shall amount to grand larciny, or some greater



known, a gold watch, of the value of twenty pounds, of the goods and chattels of one J. L. from the person of him the said J. L. with force and arms, feloniously did steal, take, and carry away. And that R. D. late of, &c. labourer, afterwards, to wit, on, &c. at, &c. (notwithstanding he the said R. D. did not apprehend, and cause to be apprehended, the said felon who stole the said watch as aforesaid, and cause the said felon to be brought to his trial for the same, and give evidence against him,) he the said R. D. with force and arms, under pretence and upon account of helping the said J. L. to his said watch, so feloniously stolen as aforesaid, did then and there wilfully, unlawfully, and feloniously take, of and from the said J. L. the sum of seven pounds, of lawful money of Great Britain, and did then and there deliver the same watch, so as aforesaid feloniously stolen, to him the said J. L. against the form of the statute, &c. and against the peace, &c. (1).

offence, or to petit larciny only, (except where the person or persons actually committing the felony shall have been already convicted of grand larciny, or of some greater offence), every person who shall buy or receive any such goods and chattels, knowing the same to have been so taken or stolen, shall be held and deemed guilty of, and may be prosecuted for a misdemeanor, and shall be punished by fine and imprisonment, or whipping, as the court of quarter-sessions, who are hereby empowered to try such offender, or as any other court before which he, she, or they shall be tried, shall think fit to inflict, *although the principal felon or felons be not before convicted of the said felony*, and whether he, she, or they, is or are amenable to justice or not, any law or statute to the contrary notwithstanding;

and in cases where the felony actually committed shall amount to grand larciny, or to some greater offence, and where the person or persons actually committing such felony shall not be before convicted, such offender or offenders shall be exempted from being punished as accessory or accessories, if such principal felon or felons shall be afterwards convicted.

(1) By stat. 4 Geo. 1. c. 11. s. 4. it is enacted, that where-ever any person taketh money or reward, directly or indirectly, under pretence or upon account of helping any person or persons to any stolen goods or chattels, every such person, so taking money or reward as aforesaid, (unless such person doth apprehend, or cause to be apprehended, such felon who stole the same, and cause such felon to be brought to his trial

## FRAUDS.

121. *Indictment for cheating, at common law (a), by means of false cards.*

That A. B. &c. being persons of dishonest conversa-

for the same, and give evidence against him,) shall be guilty of felony, and suffer the pains and penalties of felony, according to the nature of the felony committed in stealing such goods, and in such and the same manner as if such offender had himself stolen such goods and chattels, in the manner and with such circumstances as the same were stolen.

Jonathan Wild was tried on the above-recited clause, convicted, and executed, 10 G. 1.

(a) Where a fraud is practised upon a private person, it seems that an indictment is not maintainable at common law on the ground of that fraud, unless it be effected by means which either do or may prejudice the public at large, for otherwise, since the detriment is confined to the individual imposed upon, it may be recompensed by his resorting to an action for damages. In *Wheatley's case*, 2 Burr. 1127. the defendant was charged with selling and delivering 16 gallons of amber for and as 18 gallons of that liquor, and the court were clearly of opinion that the offence was not indictable, but was only a civil injury, for which an action lay.

So the detaining part of a quantity of wheat sent to the

defendant's *common grist mill* to be ground, is not indictable, no actual force being laid, nor any unreasonable toll being charged. *Channell's case*, Str. 793. East. P. C. 818. So the selling a sack of corn in the market as containing a Winchester bushel, when in fact it does not contain so much, is not indictable, for it amounts to no more than the telling a bare naked lie. *Pinkney's case*, 1 Sess. Cas. 198. East. P. C. 818. see *R. v. Munoz*, 2 Str. 1127. 7 Mod. 815. So where one obtains money from another under pretence that he is authorised by a third person. *Jones's case*, Salk. 379. *R. v. Gibbs*, 1 East. R. 185. So where one obtained goods from a tradesman under pretence of being sent by a customer. *Bryan's case*, 2 Str. 866. In *Lara's case*, 6 T. R. 565. the defendant obtained lottery tickets by pretending to purchase them, and by delivering to the owner an order for money purporting to be a draft upon the defendant's banker, knowing that he had no authority to draw upon that banker, and that the draft would not be paid; yet judgment was arrested, on the ground that the banker's check entitled the defendant to no more credit than his own

tion, and common gamblers and deceivers, with false dice and cards; on, &c. at, &c. contriving, practising, and

bare assertion, and that no false token was used to accomplish the deceit; and the same was holden in Wilders's case, cited 2 Burr. 1128, where the defendant was indicted for sending to a publican, vessels of ale falsely marked, as containing such a quantity. But this in the case of the King v. Wheatly, was considered to be a strong case.

But where, in respect of the means used, the injury is not confined to the individual, but is extended, or is likely to be extended, indefinitely, to the prejudice of the community, the offence becomes indictable. And, therefore, frauds have been holden indictable when effected by means of *false tokens*, *forgeries*, or *conspiracies*; and *false tokens* seem to include all instruments, documents, or signs, the use of which manifest an intention to impose upon the public generally, which are calculated to deceive all indifferently, and against which ordinary circumspection and prudence do not afford a sufficient protection; and, therefore, an indictment lies for selling by false weights or measures, 1 Sid. 409. Pinkney's case, East, P. C. 818. and the winning by means of false cards or dice, 2 Roll. Ab. 78. Cro. J. 497. 2 Roll. R. 107. East, P. C. 820, so the selling of precious metals by a goldsmith under a false representation of their purity and quality, seems to be indictable as a fraud affecting the public in general, and

not confined to the individual. Trem. P. C. 105. 106. (But see R. v. Bower, Cowp. 323. where it was held, that such a cheat committed by a *pawnbroker*, was not indictable. So where the fraud is effected by means of *forgery*, as where cloth was sold with the alneger's seal counterfeited upon it. Edwards's case, Trem. P. C. 103. So where the defendant sold cloth with the general seal of the trade counterfeited upon it. Worrell's case, Trem. P. C. 106. So in Gower's case, Say. 206, where the defendant was charged with obtaining goods by the production of several forged and counterfeited letters, which he falsely affirmed were letters from Spain, containing commissions for jewels, watches, and other goods, to a large amount. So in Hales's case, 9 St. Tr. 75. where the defendant was indicted for having obtained 450*l.* by a false token, viz. a promissory note with a counterfeit indorsement thereon, see also Ward's case, 2 Str. 749. R. v. Bryan, 2 Str. 866. Gibbs's case, 1 East. 173. So where the fraud is effected in pursuance of a *conspiracy*, as in the case of Skirret and others, 1 Sid. 312. who were indicted for causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written, see also R. v. Parris and others, 1 Sid. 431. R. v. Breerton and

falsely, fraudulently, and deceitfully intending one A. S. with false cards and false play, falsely, unlawfully, unjustly, fraudulently, and deceitfully to deceive and defraud, and from the said A. S. by means of the said false cards and false play, craftily and subtly, falsely, fraudulently, and deceitfully, different sums of money to acquire and obtain, then and there did solicit, excite, provoke, and procure the said A. S. to play with them the said A. B. &c. at a certain unlawful game called whist, for divers sums of money, by means whereof the said A. S. did then and there play with the said A. B. &c. at the said unlawful game called whist, for divers sums of money, and that the said A. B. &c. did then and there, with force and arms, at the said unlawful game called whist, by means of false cards and false play, subtly,\* falsely, unlawfully, and fraudulently receive, have, and obtain into their own hands and possession, the sum of 80*l.* of lawful monies of the said A. S. and from the said A. S. and the same did then and there carry away, to the great damage, &c. and against the peace, &c. (*b*).

(*2nd count, for cheating at a game of dice called passage.*) intending as aforesaid, on, &c. at, &c. subtly, falsely, unlawfully, &c. did solicit, excite, provoke, and procure the said A. S. to play with them the said A. B. &c. at a certain unlawful game called *passage*, for divers sums of money, by means whereof the said A. S. did then and there play with the said A. B. &c. at the said

others, Ray. 103. So in the King v. Orbell, 6 Mod. 42. the defendant was convicted upon a charge of having run a foot-race fraudulently, with a view to cheat a third person, by means of a private confederacy and agreement between himself and his competitor that he should win.

And, in general, wherever the fraud is of such a nature as immediately to affect the crown or the public, it is indictable though it arise out of a particular transaction or contract:

as where the defendant, who had contracted to supply French prisoners with provisions, was indicted for supplying them with unwholesome food, not fit to be eaten. R. v. Treeve, East. P. C. 824.; or where an apprentice eulists and receives bounty money, without the consent of his master. R. v. Jones, 1 Leach, 208. East. P. C. 822.

(*b*) R. v. Arnope, Trem. 91. and see R. v. Betsworth, Trem. 93.

unlawful game called passage, for divers sums of money, and that the said A. B. &c. did then and there, with false dice and by false throwing of the same, that is to say, by slurring the said dice subtly, &c. (*as before, from the \* to the end.*)

122. *Indictment for selling cloth with the alneager's seal counterfeited thereon (c).*

That A. B. &c. being persons of bad name, fame, and conversation, on, &c. with force and arms, at, &c. contriving, and falsely, fraudulently, and deceitfully intending to deceive and defraud our said lord the king of the profit of the subsidy of cloth, unlawfully, unjustly, falsely, fraudulently, and deceitfully, counterfeited and forged, and caused and procured to be counterfeited and forged, a certain seal, to the likeness and similitude of the seal of the alneager and collector of the said subsidy, and then and there, with force and arms, falsely, &c. and without any legal warrant or authority, 30 pieces of woollen cloth called serge, of the goods and chattels of some person unknown, with the said false and counterfeited seal did, and each of them did seal and cause to be sealed; and that the said A. B. &c. the aforesaid 30 pieces of woollen cloth called serge, so as aforesaid sealed with the said false and forged seal, then and there with force and arms, &c. unlawfully, &c. delivered the same to divers persons unknown, as and for 30 pieces of woollen cloth lawfully sealed by the collector of the said subsidy of our said lord the king, to the intent that the same pieces of woollen cloth should be exposed to sale, and sold without any further sealing, in deceit of our said lord the king and divers of his subjects, and against the peace, &c.

123. *Indictment at common law for uttering a counterfeit half guinea.*

(*Comm. as in pr. 1.*) One piece of false money, made of base metals, and coloured with a certain wash producing the colour of gold, to the likeness and similitude of a piece of good, lawful, and current gold money and coin

of this realm called an half guinea, unlawfully, unjustly, and deceitfully did utter and pay to one C. D. for and as a piece of good and lawful gold money and coin of this realm called an half guinea, he the said A. B. then and there well knowing the said piece to be false and counterfeit as aforesaid, to the great damage of the said C. D. and against the peace, &c.

124. *Indictment for selling by false scales.*

That A. B. late of, &c. labourer, on, &c. and from thence until the taking of this inquisition, did use and exercise the trade and business of a shopkeeper, and during that time did deal in the buying and selling, by weight, of divers goods, wares, and merchandizes, to wit, at, &c. and that the said A. B. contriving and intending to cheat and defraud the subjects of our said lord the king, whilst he exercised the said trade and business, to wit, on, &c. at, &c. did knowingly, wilfully, and publicly keep in a certain shop there, wherein he carried on his said trade and business, a certain false pair of scales for the weighing of goods, wares, and merchandizes by him sold in the way of his said trade, which said scales were then and there, by artful means, so made and constructed as to cause the goods, wares, and merchandizes weighed therein and sold thereby, to appear of greater weight than the real and true weight, by one eighth part of such apparent weight, and that the said A. B. on, &c. at, &c. well knowing the said scales to be so constructed and made, did knowingly and fraudulently sell to one C. D. (d) a subject of our said lord the king, certain goods in the way of his trade, to wit, a large quantity of flour weighed in and by the said false scales, as and for 100 pounds of flour, whereas in truth and in fact the weight of the said flour so weighed and sold as aforesaid, was short and deficient (e) of the

(d) In Gibbs's case, Str. 497. an indictment, alleging the sale of goods in unlawful measures to *divers faithful subjects to the jurors unknown*, was holden to be sufficient, see p. 176. But it is proper to allege the sale to

a person by name, if he can be ascertained.

(e) In the last-mentioned case the indictment was quashed for not ascertaining the quantity. See p. 184. and the cases there referred to.

said weight of 100 pounds by one eighth part of the said weight of 100 pounds, to wit, at, &c. to the great damage of the said C. D. and against the peace, &c.

125. *Indictment for deception in the sale of wine by bartering and false pretending (f).*

That M. M. late of, &c. gentleman, and A. F. late of the same place, gentleman, being greedy of dishonest gain, and wickedly, falsely, deceitfully, and maliciously intending to defraud T. C. of London, haberdasher, of his monies, goods, and merchandises, on, &c. at, &c. together deceitfully bargained with the aforesaid T. C. to barter, sell, and exchange a certain quantity of pretended wine as good and true new wine of the kingdom of Portugal, called new Lisbon wine, of him the said A. F. for a certain quantity of hats of him the said T. C. to the value of one hundred and eighteen pounds, of good and lawful money of Great-Britain; and upon the bartering, sale, and exchange aforesaid, he the said A. F. took upon himself and pretended to be a merchant of London, and to trade and merchandize as a merchant in wines of the kingdom of Portugal aforesaid, and then and there personated a merchant of London, as if he had been a true merchant of London, when in fact he the aforesaid A. F. never was a merchant of London, nor did he trade or merchandize as a merchant in wines of the kingdom of Portugal, or in any wine whatsoever as a merchant; and upon the bartering, sale, and exchange aforesaid he the said M. M. took upon himself to be a broker of London, when in fact he the said M. M. at the time of the bartering, sale, and bargaining aforesaid, or at any time afterwards, was not a broker of London; and the aforesaid T. C. giving credit to the said fictitious assumptions, personatings, and deceits, did then and there barter, sell, and exchange to the said A. F. and did deliver to him the said M. M. as the broker between the aforesaid T. C. and A. F. a certain quantity of hats, of the value of one hun-

(f) From *Ld. Ray. 1179. R. v. Mackarty and Forderburgh*, it seems that the judgment was ultimately given for the queen, on the ground of the conspiracy. 2 Burr. 1129. 6 Mod. 302. East. P. C. 824.

dred and eighteen pounds, for (g) ——— of the pretended wine aforesaid; and that the aforesaid M. M. and A. F. upon the bartering, bargaining, and sale aforesaid, did affirm, that the aforesaid pretended wine was true new wine of the kingdom of Portugal aforesaid, called new Lisbon wine, and was the wine of the aforesaid A. F. when in truth and in fact the aforesaid pretended wine was not wine of the kingdom of Portugal, nor was it drinkable or wholesome, nor was it the wine of the aforesaid A. F. to the great deceit and damage of him the said T. C. and against the peace, &c.

126. *Indictment for defrauding a person of a sum of money, by colour of a false and counterfeit letter, and other false tokens, upon the stat. 33 Hen. 8. c. 1 (h).*

That L. P. late of, &c. miller, on, &c. at, &c. falsely

(g) On account of this blank, and not giving a true description of the quality of the wine, &c. the defendants' counsel contended on motion, that the judgment ought to be arrested, but it was affirmed for the queen. 2 Lord Raym. 1179.

(h) The preamble of which recites, that evil disposed persons devising how they might unlawfully get into their possession goods, chattels, and jewels of other persons, have of late, to avoid the punishment of theft, falsely and deceitfully contrived and devised *privy\* tokens and counterfeit*

*letters in other men's names,* unto divers persons their special friends and acquaintances, for the obtaining of money, goods, &c. of the same persons their friends and acquaintances, by colour whereof they have unlawfully obtained the same, ENACTS, that if any person or persons shall falsely and deceitfully obtain, or get into his or their hands or possession, any money, goods, chattels, jewels, or other things, of any other person or persons, by means of any such false token or counterfeit letter, made in any other man's name as aforesaid, and shall be thereof

\* A mere false affirmation is not within the statute. *R. v. Munoz, Str.* 1127. 7 Mod. 315.; and a written document is not within the act, unless it be made in the name of a third person, and calculated to gain some credit beyond the mere assertion of the defendant. *Lara's case, 6 T.R. 565; Wilder's case, East. P. C. 827.*



and deceitfully did pretend and affirm to one T. T. that his the said L. P.'s name was H. H. and that he was the son of H. H. of Newcastle, in the county of Stafford, esq. and nephew to Mr. H. of Newport, in the county of Salop, (meaning J. H. of Newport, clerk,) and that the said L. P. a certain false and counterfeit letter, in the name of him the said J. H. as a true letter of the proper hand-writing of him the said J. H. falsely, fraudulently, and deceitfully to the said T. T. then and there did deliver, (he the said J. H. of Newport, in the county of Salop, clerk, then and long before being the *special* friend and intimate acquaintance of him the said T. T.) by which said false and counterfeit letter it was mentioned (*i*), that the said J. H. desired the said T. T. to supply the bearer thereof, Mr. H. H. with the sum of sixty guineas, and place it to his account (meaning the account of him the said J. H.) and that the said T. T. then and there believing the said false and counterfeit letter to be of the proper hand-writing of him the said J. H. did then and there pay and deliver to the said L. P. sixty pieces of gold coin, of the proper coin of this kingdom, called guineas, of the value of sixty-three pounds, of lawful money of Great Britain; whereas in truth and in fact the said J. H. never did write or send, or cause to be written or sent, any such letter to the said T. T. desiring the said T. T. to supply the said H. H. with any sum of money whatever: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said L. P. on, &c. at, &c. by colour of the said counterfeit letter, and by the said false pretences, unlawfully, falsely, fraudulently, and deceitfully did obtain and get into his hands and possession, of and from the said T. T. the said sum of sixty-three pounds, of lawful money of Great Britain, of the monies of him the said T. T. and the said

convicted, by witness taken before the lord chancellor, or before the justices of assize, or before the justices of peace of any county, city, borough, town, or franchise in their general sessions, or by action in any of the king's courts of record, by process or otherwise, every such offender shall suf-

fer such punishment, by imprisonment, setting upon the pillory, or otherwise by any corporal pain, except pains of death, as shall be appointed by those before whom he shall be so convicted.

(*i*) Qu. whether the *tenor* should not be set out.

L. P. the said T. T. of his money aforesaid then and there fraudulently and deceitfully did deceive and defraud, to the great damage and deceit of the said T. T. against the form of the statute, &c. and against the peace, &c.

127. *Indictment for obtaining money, by drawing a bill and falsely pretending that W. H. was indebted to the defendant, and would pay the bill (k).*

That A. B. late of, &c. labourer, being an ill-disposed person and common cheat, and contriving and intend-

(k) By 30 Geo. 2. c. 24. s. 1. it is enacted, that all persons who, knowingly and designedly by false pretence or pretences, shall obtain\* from any person or persons, money, goods, wares, or merchandizes, with intent to cheat or defraud any person or persons of the same, shall be deemed offenders against law and the public peace; and the court, before whom such offender or offenders shall be tried, shall, in case he, she, or they shall be convicted of any of the said offences, order such offender or offenders to be fined and imprisoned, or to be put in the pillory, or publicly whipped, or to be transported,

as soon as conveniently may be, according to the laws made for transportation of felons, for the term of seven years, as the court in which any such offender or offenders shall be convicted shall think fit and order.

The stat. 52. G. 3. c. 64. after reciting the stat. 30 G. 2. c. 24. and that it had been deemed expedient to extend its provisions, ENACTS, that all persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, or from any body politic or corporate, any money, goods, wares, or merchandizes, or any bond, bill of exchange, bank note,

\* In general, when the credit is obtained by the false pretence, the case falls within this statute. A person was employed to superintend workmen to take an account of their wages, and was at the end of each week supplied with money to pay them, but was not entitled to receive money on account, but merely what was due to the workmen for work done. He delivered in a note of the amount of wages in the common form, but charged a larger sum than the workmen were entitled to, with intent to appropriate the surplus to his own use. And the judges, on the ground above stated, held the case to be within the act. *Mitchell's case*, Gloucester Sp. Ass. 1798. East. P. C. 830. Where goods have been obtained by fraud, the court has no power to award restitution as in cases of felony. 5 T. R. 175. *R. v. De Veaux*, Leach, 666.

ing unlawfully, fraudulently, and deceitfully to cheat and defraud one C. D. of his monies (or of his goods, &c. *as the case is,*) for the support of his profligate way of life (*l*), on, &c. with force and arms, at, &c. did unlawfully, *knowingly, designedly (m)*, and *falsely (n)* pretend (*o*) to the said C. D.\*, that one W. H. was a gentleman of fortune residing at H. in the county of B. and that divers large sums of money were due and owing from the said W. H. to the said A. B. and that the said W. H. would accept and pay, according to the tenor and effect thereof, a certain bill of exchange in writing, then and there drawn by the said A. B. upon the said W. H. and dated the day and year aforesaid, and whereby the said A. B. required the said W. H. to pay to the said C. D. or order, the sum of thirty-one pounds ten shillings, one week after the date thereof, and to place the sum to the account of him the said A. B. and then and there delivered the same to the said C. D. by

promissory note, or other security for the payment of money, or any warrant or order for the payment of money, or delivery or transfer of goods, or other valuable thing, with intent to cheat or defraud any person or persons, or any body politic or corporate, of the same, or shall knowingly send or deliver any letter or writing, with or without a name or names subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with a view or intent to extort or gain any bond, &c. (*as before*) shall be deemed offenders against law and the public peace, and shall be liable to be prosecuted and punished, in like manner as if they had knowingly and

designedly, by false pretence or pretences, obtained money, goods, wares, and merchandizes from any person or persons with intent to cheat or defraud any person or persons of the same, or had sent or delivered such letter or writing with a view or intent to extort money, goods, wares, or merchandizes from the person or persons so threatened.

(*l*) This inducement appears to be unnecessary, since it is no part of the description of the offence.

(*m*) These words are essential to the description of the offence under both the statutes.

(*n*) As to the necessity for this allegation, see p. 90.

(*o*) As to the necessity for setting out the means by which the fraud was effected, see p. 88, 89, 90.

which said false pretences the said A. B. did then and there, to wit, on, &c. knowingly and designedly obtain from the said C. D. a large sum of money, to wit, five pounds ten shillings of the money of the said C. D. with intent then and there to defraud him the said C. D. of the same; whereas (*p*) in truth and in fact the said W. H. was not then a gentleman of fortune residing at H. in the county of B. and whereas in truth and in fact there were not then divers large sums of money owing from the said W. H. to the said A. B. and whereas in truth and in fact the said W. H. did not nor would accept the said bill of exchange, and whereas in truth and in fact the said W. H. did not, could not, nor would pay the same bill of exchange when the same became due, according to the tenor and effect of the same bill, or at any other time whatsoever, to the great damage and deception of the said C. D. also against the form, &c. and against the peace, &c.

(*2nd Count.*) That the said A. B. on, &c. with force and arms, at, &c. contriving and intending, &c. (*as before*) did unlawfully, knowingly, designedly, and falsely pretend to the said M. L. that the said W. H. was a gentleman residing at H. in the county of B. and that the said W. H. would pay a certain other bill of exchange in writing, then and there drawn by the said A. B. upon the said W. H. and dated the day and year last-aforesaid, and whereby the said A. B. required the said W. H. to pay to the said M. L. or order, the sum of thirty-one pounds ten shillings, one week after date thereof, and to place the same to the account of him the said A. B. and then and there delivered the same to the said M. L. by which said false pretences, &c. (*state the obtaining of the money, and then negative the pretences, and conclude as in the first count.*)

128. *Under false pretences of being merchants of good fortune, &c.*

(*Commencement as in pr. 127 to the \*.*) That the said

(*p*) It has been lately decided that it is essential to negative, expressly, the truth of those pretences by means of which the property was obtained, and that it is not sufficient to allege, in the words of the statute, that the defendant did, by false pretences, obtain, &c.

A. B. then was a merchant of great fortune, who wanted to purchase horses in order to send them abroad, and that he then was a housekeeper at Penge Common, in the county of Kent. And the jurors, &c. that the said A. B. &c. by the *false pretences aforesaid*, did then and there unlawfully, *knowingly*, and *designedly*, obtain from the said C. D. divers *goods and merchandizes*, that is to say, one mare and six geldings of him the said C. D. of great price and value, to wit, of the price and value of one hundred and forty pounds, of lawful money of Great Britain, with intent then and there to cheat and defraud the said C. D. of the same, whereas in truth and in fact, &c. (*negative the pretences, and conclude as in pr. 127.*)

129. *For obtaining goods from a tradesman, under pretence of being a servant to one of his customers.*

(*Commencement as in pr. 127 to the \*.*) That he the said A. B. then was the servant of one E. A. (the said E. A. then and long before being well known to the said C. D. and a customer of the said C. D. in his business and way of trade); and that he the said A. B. was then sent by the said E. A. to the said C. D. for five yards of superfine woollen cloth; by which said false pretences the said A. B. did then and there, to wit, on, &c. at, &c. unlawfully, *knowingly*, and *designedly*, obtain from the said C. D. five yards of superfine woollen cloth, of the value of four pounds and fifteen shillings, of the goods, wares, and merchandizes of the said C. D. with intent then and there to cheat and defraud him the said C. D. of the same; whereas in truth and in fact, (*negative the pretences, and conclude as in pr. 127.*)

130. *Indictment against an apprentice for a fraudulent enlistment (q).*

That A. B. late of, &c. being an apprentice bound by in-

(q) By the mutiny act, (see 53 G. 3. c. 17. s. 90.) if any person shall make any false representation of any particular contained in the oaths and certificates mentioned in that statute, before the magistrate, at the time of attestation, for the purpose of obtaining, and shall obtain, any enlisting money or bounty for entering into his majesty's service, or any other

denture (r) to serve one L. M. for a certain term of years, which is yet unexpired, did, without the consent of his master, on, &c. at, &c. cause and procure himself to be enlisted into his majesty's ——— regiment of foot; and that he the said A. B. did then and there, upon his attestation before C. D. esquire, then being one of his majesty's justices assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors, within the said county committed, at the time of the attestation of him the said A. B. there before the said magistrate, unlawfully, knowingly, designedly, and falsely represent and pretend, that he the said A. B. was not then an apprentice, for the purpose of obtaining a bounty for entering into the service of our said lord the king; and did then and there, by means of such false representation and pretence, unlawfully, knowingly, and designedly, obtain from ———, then paymaster of his majesty's ——— regiment of foot, the sum of 12 pounds, as and for such bounty-money; whereas in truth and in fact the said A. B. at the time of such attestation, then and there was and still is an apprentice, bound by indenture to serve L. M. for the then remainder of a term of seven years, of which term five years were then unexpired, to wit, at, &c. against the form of the statutes, &c. and against the peace, &c. (*In another count allege an intention to defraud the king (s).)*

money, he shall be deemed guilty of obtaining money under false pretences, within the stat. 30 G. 2. c. 24. It is also enacted by the first of these stat. that the production of such certificate and proof of the handwriting of the justice of the peace giving such certificate, shall be sufficient evidence of the parties having represented the particulars contained in the oath sworn by him, and specified in the certificate of the justice. This

representation states the place of the party's birth, his age, that he does not belong to any other regiment, or to his majesty's navy or marines, that he has the perfect use of his limbs and hearing, and is not an apprentice. 53 G. 3. c. 17. s. 147.

(r) The indentures must be proved by the subscribing witness. *R. v. Jones, Leach*, 208.

(s) See *R. v. Jones, Leach*, 208. *East. P. C.* 822.

131. *Indictment for fraudulently winning money at dice (t).*

(Comm. as in pr. 1.) By fraud, shift, cozenage, circumvention, deceit, unlawful device, and ill practice, in playing with dice, that is to say, in playing at a certain game called hazard, and by then and there fraudulently slurring the dice (u), did win, obtain, and acquire to himself, \_\_\_\_\_, of lawful money of Great Britain, of the monies of one C. D. of and from him the said C. D. in and by playing with him the said C. D. at dice, to the great damage of the said C. D. against the form, &c. and against the peace, &c.

132. *Indictment for winning above ten pounds at cards, at one time and sitting (x).*

That A. B. late of, &c. gentleman, on, &c. at the pa-

(t) By stat. 9 Ann. c. 14. s. 5. if any person or persons shall, by any fraud or shift, cozenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at or with cards, dice, or at any the games aforesaid\*, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play as aforesaid, win, obtain, or acquire, to him or themselves, or to any other or others, any money or other valuable thing or things whatsoever, or shall, at any one time or sitting, win of any one or more person or persons whatsoever above the sum or value of £10; and be convicted

of any of the said offences, upon an indictment or information to be exhibited against him or them for that purpose, he or they shall forfeit five times the value of the money or other thing so won as aforesaid; and in case of such ill practice as aforesaid, shall be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury; and such penalty to be recovered by such person or persons as shall sue for the same by such action as aforesaid.

(u) It seems to be necessary to set out the particular means of fraud.

(x) By stat. 18 Geo. 2. c. 34. s. 8. it is enacted, That if any person shall win or lose at play,

\* Cards, dice, tables, tennis, bowls, or other game or games whatsoever.

A foot-race is a game within this statute; and one person running alone (against time) is within the meaning of it, &c. *Brown v. Berkeley*, Cowp. 231. Vide *Lynall v. Longbotham*, 2 Wils. 36. So as to horse-racing. *Goodburn v. Marley*, 2 Stra. 1159. Vide also *Lord Raym.* 87. 452. 1034.

*rish (y) of ———, in the county of ———, did, by gaming and playing at cards with C. D. gentleman, win, at one time and sitting, above the sum of ten pounds, that is to say, the sum of four hundred and twenty pounds. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said A. B. afterwards, to wit, on, &c. in the parish above mentioned, in the county aforesaid, did receive (z), obtain, and procure to himself of the said C. D. but from and by the hands of E. F. as agent or servant to the said C. D. for and in satisfaction of the said four hundred and twenty pounds so won as aforesaid, the sum of four hundred and twenty pounds, of lawful money of Great Britain, to the great damage of the said C. D. against the form of the statute, &c. and against the peace, &c.*

*2nd count.* That the said A. B. on, &c. at, &c. did, by gaming and playing at cards with C. D. gentleman, win,

or by betting, at any one time, the sum or value of ten pounds, or within the space of twenty-four hours, the sum or value of twenty pounds, such person shall be liable to be indicted for such offence within six months after it is committed, either before his majesty's justices of the king's bench, assize, gaol delivery, or grand sessions; and being thereof legally convicted, shall be fined five times the value of the sum so won or lost; which fine (after such charges as the court shall judge reasonable allowed to the prosecutors and evidence out of the same) shall go to the poor of the parish or place where such offence shall be committed.

s. 9. Provided that if any person so offending shall discover any other person so offending, so that such person shall be thereupon convicted, the person so discovering shall be

discharged, and indemnified from all penalties, by reason of any such offence, if such person so discovering hath not been before convicted thereof, and shall be admitted as an evidence to prove the same.

See statutes 2 Geo. 2. c. 28. 12 Geo. 2. c. 28. 25 Geo. 2. c. 36. s. 5. and 16 Car. 2. c. 7.

(y) The offences should be laid to have been committed within a parish, since the fine is given to the poor of such parish. See *Lookup's case*, Burr. 2018. where, in a *qui tam* action under this statute, the defect was holden to be cured by a verdict, which found that the defendant did owe, &c. to the poor of a particular parish. And see Mr. J. Buller's observation, 4 T. R. 227.

(z) This special allegation of the receipt from the agent does not appear to be necessary.



obtain, and acquire to himself, of and from the said C. D. at one time and sitting, above the sum of ten pounds, that is to say, the sum of four hundred and twenty pounds, of and from the said C. D. (*Conclude as before.*)

## FORGERY (a).

(a) Forgery is punishable as a misdemeanor at common law, and in a great variety of instances, as a capital felony, by virtue of different statutes. Mr. J. Blackstone, 4 Comm. 247. defines it to be the fraudulent making or alteration of a writing to the prejudice of another man's right. Mr. Baron Eyre, in Taylor's case, East. P. C. 853. defined it to be a false signature made with intent to deceive; but this definition does not expressly comprehend the cases where the forgery consists in the altering a valid instrument with a fraudulent intention. In the case of Parkes and Brown, 2 Leach, 898. it was defined, by Mr. J. Grose, to be "*the false making of a note or other instrument with intent to defraud.*"

1. With respect to the *false making*, these words, with great propriety, include every fraudulent and material alteration of an instrument already existing, whether by diminution, addition, transposition, or any combination of these practices, for in each of these instances a new and false instrument is created, and such practices are as much within

the mischief of the offence, and frequently even more so, than if the whole instrument had been fabricated; and, therefore, the alteration of the figures in a bill of exchange, so as to make a larger sum payable, or of the date, so as to make the same sum payable at an earlier period, 4 T. R. 320. or the fraudulent application of a genuine signature to a false instrument, Puckering's case, 1 And. 100. Teague's case, East. P. C. 979. amounts to a forgery, see 3 Ins. 169, 170. 1 Hale, 683. Str. 18. Daweon's case, East. P. C. 978. 3 P. Wms. 419. Kinder's case, East. P. C. 855. But there must be a *false making*, that is, some false signature or alteration of an existing instrument; and, therefore, where a defendant offered in payment a bill of exchange which was made payable to Barnard M'Carty, and which had been indorsed by Barnard M'Carty, and falsely asserted that his name was Barnard M'Carty, and that the indorsement was his, upon which representation the person to whom it was offered took the bill in payment, it

was holden by all the judges, that the offence did not amount to forgery, since there was no false indorsement, *R. v. Hevey, Leach, 268. East. P. C. 856.* But it is not necessary that the false making should be in another man's name, though it seems to have been formerly so considered. *Lewis's case, Fost. 117. 1 Haw. c. 70. s. 2.*

Where the offence consists in the false making of an instrument, in resemblance of another genuine instrument, it is not essential that the resemblance should be complete in every respect, it is sufficient if it be strong enough to effect the particular fraud, and to prevail over that degree of caution, prudence, and discretion, which ought to be used in the usual course of affairs; and, therefore, though the word *pounds* and the watermark words, *Bank of England*, were omitted in the body of a forged bank note, the paper of which was thicker than ordinary, yet as it resembled a true note in other respects, it was holden to be sufficient to support the charge. *Elliot's case, Leach, 210.*

So in *Hoost's case, Ex. Sp. Ass. 1802, cor. Le Blanc, J. East. P. C. 950.* where it appeared that several persons had been deceived by the counterfeited notes in question, though a person from the bank stated, that he could not have been imposed upon by the counterfeits, the learned judge was of opinion, that the resemblance was strong enough to support the indictment, since it was

sufficient to impose upon persons in general, though not upon one of particular experience. So it is not essential that the instrument should be stamped, though without a stamp it could (though genuine) have no legal operation. See p. 102. and the cases there referred to, and *R. v. Fitzgerald and Lee, Leach, 24. East. P. C. 953.*

Neither is it requisite, that the instrument, if genuine, should be operative and available, see p. 102. and the cases there referred to; but, if the instrument be intrinsically defective and illegal, no indictment can be maintained upon it. See p. 101. and *Jones's case, Leach, 243. East. P. C. 883.* where the note was set forth as purporting to be a bank note, and ran thus,—“I promise to pay, for self and company, of *my bank in England*,” and the court of K. B. held, that the prisoner was entitled to an acquittal.

So, in *Wall's case, East. P. C. 953.* it was holden, that a person could not be guilty of forging a will of land, purporting to be attested by two witnesses only, since such a will is void by the express enactment of the stat. of frauds, 29 Car. 2. c. 3. s. 5.

#### 2. *A note or other instrument.*

It has been doubted whether, at common law, the offence of forgery could be committed by the false making of *any* instrument which might prejudice another, 1 Haw. c. 70. s. 8, 9, 10. *East. P. C. 859. 2 Str. 747. Ld. Ray. 1461.* But, clearly, it extended to

the false making of records, and of all instruments of a *public nature*, such as a parish register, a privy seal, a licence from the barons of the exchequer to compound a debt, &c. and to private deeds and instruments not under seal, 1 Haw. c. 70. s. 9, 10. And many instances are to be found of indictments for forging instruments not under seal, such as a bill of exchange, Roll. 35. an acquittance, *R. v. Ferrers*, 1 Sid. 278. Trem. 129. a warrant of attorney, Ray. 81. a bill of lading, 5 Mod. 137. 1 Sulk. 342. 371. See 2 Str. 747. 2 Ld. Ray. 1461. *R. v. Ward*, where it was holden, that the forging an order with intent to avoid the delivery of certain goods mentioned in a schedule, was forgery at common law, though the fraud was not effected. And in *Leander Fawcett's case*, East. P. C. 862. it was holden, that the forging an order of discharge by his creditor, by one who was committed to gaol under an attachment for a contempt in a civil cause, by means of which he obtained his discharge, was at all events a misdemeanor at common law, although the order was a mere nullity, since the attachment had not been issued for non-payment of money; and a great majority of the judges held, that it was indictable as a forgery at common law.

But there are few cases in which a forgery can be committed likely to prejudice the public, or even a private individual to any serious extent,

which has not been provided against by one or more of the numerous statutes which have been levelled against this offence; to some of the principal ones the reader is referred below.

3. An *intention to defraud* another is of the very essence of this offence at common law, and seems to form part of the definition of it in the several statutes, which prohibit and more severely punish particular branches of it. But it is by no means necessary, that any prejudice should actually result from the forgery. 2 Str. 747. 2 Ld. Ray. 1461.; it is sufficient, if another party may be prejudiced. An intent to defraud must be averred, see p. 103. 168.; but it may be averred generally, without specifying the means. *Ib.* It must, however, be proved as it is alleged. *Ib.* It has been holden, that it is no objection to a special verdict, that the forgery was not found to have been committed for the sake of gain or of fraud. *Ward's case*, Ld. Ray. 1466.

As to the forgery of deeds, wills, securities, receipts, orders for money, &c. or uttering of the same, to defraud any person or corporation, see the stat. 45 G. 3. c. 89. s. 1. 2 G. 2. c. 25. 7 G. 2. c. 22. 15 G. 2. c. 13. 41 G. 3. c. 39.; of drafts on the receiver-general of the customs, see stat. 46 G. 3. c. 150.; of drafts, &c. of public officers, stat. 46 G. 3. c. 45. 75. 76. 83. 142. 150. 50 G. 3. c. 65. s. 18. 51 G. 3. c. 13. 52 G. 3. c. 143.; of re-

193. *Indictment for forging an indenture of bargain and sale, and a release of another's freehold estate in right of his wife, upon stat. 5 Eliz. ch. 14. (b)*

'That J. G. gent. and E. his wife, in right of her tho

ceipts for contributions under the Loan Acts, 41 G. 3. U. K. c. 3. s. 24.; of contracts for the redemption of the land-tax, stat. 42 G. 3. c. 116. 194. 50 G. 3. c. 65. 51 G. 3. c. 15.; of lottery tickets, stat. 44 G. 3. c. 93. s. 11.; of paper for bank notes, or engraving bank notes without authority, stat. 45 G. 3. c. 89. 52 G. 3. c. 138.; of dollars or tokens of the bank of England or Ireland, stat. 45 G. 3. c. 42. s. 1.; of foreign bills of exchange, stat. 43 G. 3. c. 139. s. 1. 3.; of debentures for teas exported to Ireland, stat. 41 G. 3. c. 75. s. 7.; of excise certificates, stat. 41 G. 3. c. 91. s. 5.; of franks, stat. 43 G. 3. c. 28.

' (b) By the st. 5 Eliz. c. 14. s. 2. if any person or persons, upon his or their own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly, and falsely, forge or make, or subtilly cause or wittingly assent to be forged or made, any false deed, charter, or writing sealed, court-roll, or the will of any person or persons, in writing, to the intent that the estate of freehold or inheritance of any person or persons, of, in, or to any lands, tenements, or hereditaments, freehold or co-

pyhold, or the right, title, or interest of any person or persons, of, in, or to the same, or any of them, shall or may be molested, troubled, defeated, recovered, or charged, or shall pronounce, publish, or shew forth in evidence, any such false and forged deed, charter, writing, court-roll, or will, as true, knowing the same to be false and forged, as is aforesaid, to the intent above remembered, "except being an attorney, lawyer, or counsellor, he shall for his client plead, shew forth, or give in evidence such false and forged deed, &c. to the forging whereof he was not party or privy," and shall be thereof convicted, either upon action or actions of forgery or false deeds to be founded upon the said statute, at the suit of the party grieved, or otherwise, according to the order and due course of the laws of this realm, &c. shall pay unto the party grieved his double costs and damages, to be found or assessed in that court where such conviction shall be, and also shall be set upon the pillory in some open market, or other open place, and there have both his ears cut off, and also his nostrils slit and cut, and seared with a hot iron, &c. and shall forfeit

said E. on the ———, &c. and long before, were, and continually from thence hitherto have been, and still are,

to the king the whole issues and profits of his lands and tenements, and suffer perpetual imprisonment, &c.

By sec. 3. if any person, upon his own head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly, and falsely forge or make, or cause or assent, &c. any false charter, deed, or writing, to the intent that any person shall or may have or claim any estate or interest, for term of years, of, in, or to any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee simple, fee tail, or for term of life, lives, or years; or shall, as is aforesaid, forge, make, &c. any obligation or bill obligatory, or any acquittance, release, or other discharge, of any debt, accompt, action, suit, demand, or other things personal; or shall pronounce, publish, or give in evidence (except as is before excepted) any such false and forged charter, &c. as true, knowing the same to be false and forged, and shall be thereof convicted by any of the ways or means aforesaid, he shall pay unto the party grieved his double costs and damages, to be found and assessed in such court where the said conviction shall be had, and shall be also set upon the pillory in some open market-town, or other open place, and there have one

of his ears cut off, and also shall suffer imprisonment for one year, &c.

By s. 7, 8. it is further enacted, that if any person so convicted or condemned of any of the offences aforesaid, shall, after any such his conviction or condemnation effusions, commit or perpetrate any of the said offences, in form aforesaid, that then every such second offence shall be adjudged felony without benefit of clergy, saving to all persons, other than the said offenders, and such as claim to their uses, all such rights, &c. which they shall have to any the hereditaments of any such person, so as is aforesaid convicted or attainted, at any time before, &c. saving also the dower of such offender's wife, and the right of his heir.

Sect. 10. further enacts, that all justices of oyer and terminer, and justices of assize, shall have power to inquire of, hear, and determine the offences aforesaid.

Sect. 9. 12. and 16. provide, that this act shall not extend to any ordinary, or his commissary, &c. for putting their seal of office to any will to be exhibited unto them, not knowing the same to be false or forged, or for writing of the said will, or prohibiting of the same; nor to any proctor, &c. for the writing or pleading of any proxy made according to

seised in their demesne as of fee of and in certain messuages, lands, and tenements, called Jawick, with their appurtenances, in the parish of Clackton, in the county of Essex, to wit, at, &c. and that J. C. late of London, merchant, being a person of evil name and fame, and of a wicked disposition, and contriving and intending the said J. G. and E. his wife, unjustly to aggrieve, and with an intent that the state of freehold of them the said J. G. and E. of and in the said lands, tenements, and hereditaments, called Jawick, in the parish of Clackton, in the county of Essex aforesaid, and the right, title, and interest of the said J. and E. of and in the same, should be molested and troubled, afterwards, to wit, on, &c. at, &c. upon his own head and imagination, with force and arms, &c. wittingly, subtilly, and falsely, did forge and make, and cause to be forged and made, a certain false writing, sealed, purporting to be sealed and delivered by the said J. G. and E. and in itself purporting to be an indenture of bargain and sale for one year, and to bear date on, &c. and supposed to be made between them the said J. and E. by the names of J. G. of the city of Gloucester, gentleman, and E. his wife, of the one part, and the aforesaid J. by the name of J. C. of London, merchant, of the other part: in which said indenture is mentioned and supposed in substance (among other things), "That for and in consideration of the sum of five shillings, of lawful money of Great Britain, to the said J. G. and E. his wife, in hand paid by the said J. C. at or before the sealing and delivery of the same indenture, the receipt whereof the said J. G. and E. his wife thereby are mentioned to have acknowledged, they the said J. G. and E. his wife had granted, bar-

the ecclesiastical law, &c. for the appearance of any person being cited to appear in such court; nor to any archdeacon or official, for putting their authentic seal to the said proxy or proxies; nor to any ecclesiastical judge, for admitting of the same; nor to any person who shall plead or shew forth

any deed or writing exemplified under the great seal of England, or under the seal of any other authentic court of this realm; nor to any person who shall cause any seal of any court to be set to any such deed, charter, or writing enrolled, not knowing the same to be false or forged.

gained, and sold, and by the same indenture have granted, bargained, and sold unto the said J. C. all that park, commonly called or known by the name of Jawick Park, in the parish of Clackton, in the county of Essex, (*setting out the description of the premises*) to have and to hold the said park, trees, woods, underwoods, deer, hereditaments, and appurtenances, thereby bargained and sold, or meant, mentioned, or intended so to be, and every part thereof, unto the said J. C. his executors, administrators, and assigns, from the day next before the day of the date of the same indenture, for and during, and until the full end and term of one whole year from thence next following, and fully to be compleat and ended, yielding and paying therefore, upon the last day of the said term thereby granted, the rent of one pepper-corn, if the same should be lawfully demanded, to the intent and purpose that by virtue thereof, and of the statute for transferring uses into possession, the said J. C. might be in actual possession of all and singular the said premises thereby granted, bargained, and sold, or meant or intended so to be, and thereby might be enabled to receive and take the graut and release, reversion and inheritance thereof, to the use of himself, his heirs, and assigns, for ever: to the great damage of the said J. G. and E. his wife, against the form, &c. and against the peace, &c.

(*2nd Count.*) And the jurors aforesaid, upon their oath aforesaid, do further present, That the said J. C. contriving and intending the said J. G. and E. his wife as aforesaid unjustly to aggrieve, and with the said intent, that the state of freehold of them the said J. and E. in right of the said E. of and in the said lands, tenements, and hereditaments, and the right, title, and interest of them the said J. and E. of and in the same, should be molested and troubled, on, &c. at, &c. upon his own head and imagination, with force and arms wittingly, subtilly, and falsely, did forge and make, and caused to be forged and made, one other false writing, sealed, in itself purporting to be an indenture of release, and to bear date on the twenty-second day of September, in the said first year of the reign of our said lord the now king, and supposed to be made between them the said J. G. and E. his wife, by the names of J. G. of the city of Gloucester, gent. and E. his wife of the one part, and the said J. C. by the name of J. C. of London, merchant, of the other part, in

which said indenture of release is mentioned and supposed in substance (among other things), “That for and in consideration of the sum of four thousand and five hundred pounds, of lawful money of Great Britain, to the said J. G. and E. his wife, in hand paid by the said J. C. at and before the sealing and delivery of the said indenture of release, the receipt and payment whereof the said J. G. and E. his wife by the same indenture of release are mentioned to have acknowledged, and of the same and every part thereof to have acquitted, exonerated, and discharged, the said J. C. his heirs, executors, administrators, and assigns, and every of them, thereby they the said J. G. and E. his wife had granted, bargained, sold, aliened, released, and confirmed, and by the same indenture of release, have granted, bargained, sold, aliened, released, and confirmed, to the said J. C. as by the same indenture is supposed (in his actual possession then being by virtue of a bargain and sale to him thereof made and granted by the said J. G. and E. his wife, in consideration of five shillings, by indenture bearing date the day next before the day of the date of the same indenture of release, for one whole year, to begin from the day next before the day of the date of the said indenture of bargain and sale, and mentioned to be executed before the supposed sealing and delivery of the same indenture of release, and by force of the statute for transferring uses into possession,) to his heirs and assigns for ever, all that park, commonly called or known by the name of Jawick Park, in the parish of Clackton, in the county of Essex, (*setting out the premises as before,*) and all the estate, right, title, interest, use, trust, possession, freehold, inheritance, property, claim, and demand, whatsoever, as well in law as in equity, of them the said J. G. and E. his wife, of, in, to, or out of the said park and premises, and every part and parcel thereof; and also all deeds, evidences, muniments, escripts, and writings, belonging, touching, or in any wise concerning the same lands, hereditaments, and premises, or any part thereof, to have and to hold the said park, trees, woods, underwoods, deer, hereditaments, and appurtenances, thereby granted and released, or meant, mentioned, or intended so to be, and every part thereof, to the said J. C. his heirs and assigns, and to the only proper use, benefit, and behoof of the said J. C. and his heirs and assigns,” to the great damage of the said J. G. and E. his wife, to the evil example of all others in the like case offending, against the



form, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. C. being a person of evil name and fame, and of a wicked disposition, and contriving and intending the said J. G. gentleman, and E. his wife, unjustly to aggrieve, and with an intent that the state of freehold of them the said J. and E. G. in right of the said E. of and in certain lands, tenements, and hereditaments, called Jawick, in the parish of Clackton, hereinbefore mentioned, in the county of Essex, and the right, title, and interest of the said J. and E. of and in the same, should be molested and troubled, on, &c. with force and arms, at, &c. falsely did pronounce and publish one false, forged writing, sealed, purporting to be sealed and delivered by the said J. G. and E. his wife, as a true writing, he the said J. C. knowing that writing to be a false, forged, and counterfeited writing, the same writing in itself purporting to be an indenture of bargain and sale for one year, and to bear date on the twenty-first day of September, in the said first year of the reign of our said lord the now king, and to be made between the said J. and E. by the names of J. G. of the city of Gloucester, gentleman, and E. his wife, of the one part, and the said J. C. by the name of J. C. of London, merchant, of the other part; in which same last-mentioned indenture of bargain and sale is mentioned and supposed in substance (among other things,) that for (*set out the indenture of lease as in the first count,*) (he the said J. C. at the said time that he the said J. C. as aforesaid did publish and pronounce the said false forged writing, as a true writing, well knowing that writing to be falsely forged,) to the great damage of the said J. G. and E. his wife, to the evil example of all others in the like case offending, against the form, &c. and against the peace, &c. (*Fourth count for publishing the release.*)

134. *For forging (c) a bank of England note, and uttering the same.*

*Lancashire, to wit.* That J. B. late of, &c. labourer,

(c) The stat. 15 Geo. 2. c. 13. s. 11, enacts, that if any person or persons shall forge, counterfeit, or alter, any bank note, bank bill of exchange, dividend warrant, or any boud

heretofore, that is to say, on, &c. with force and arms, at, &c. feloniously did *forge and counterfeit (d) a certain bank*

or obligation, under the common seal of the said company, (i. e. Bank of England,) or any indorsement thereon, or shall *offer*, or *dispose of*, or *put away* any such forged, counterfeit, or altered note, &c. or the indorsement thereon, or demand the money therein contained, or pretended to be due thereon, or any part thereof, of the said company, or any of their officers or servants, knowing such note, &c. to be forged, counterfeit, or altered, with intent to defraud the said company or their successors, or any other person or persons whatsoever, every person or persons so offending, and being thereof convicted, in due form of law, shall be deemed guilty of felony without benefit of clergy.

By 13 Geo. 3. c. 79. making or knowingly having in possession, instruments for making paper, with the words "Bank of England," visible in the substance of it, is a capital felony. Engraving notes, &c. with like words, or with the sums in white letters on black ground, or knowingly having such in possession, or altering, &c. subject to imprisonment, 41 Geo. 3. (U. K.) c. 39.—Making, or having in possession without authority, any instrument for making paper, of the sort therein described, with curved bar lines, or the sums appearing in the substance of the paper, or procuring the numerical sum of any bank note,

and to appear visible in the substance of the paper, &c. felony, and transportation for fourteen years.

41 Geo. 3. c. 39. knowingly receiving, or having in possession, forged bank-notes, &c. without lawful excuse, felony, and transportation for 14 years. Engraving, &c. on plate, &c. any bank note, &c. &c. purporting to be of the Bank of England, or using such plate, &c. or knowingly having such in possession, without written authority, or uttering, &c. felony and transportation for seven years.

The st. 45 G. 3. c. 89. s. 2. enacts, that if any person or persons shall *forge, counterfeit*, or *alter*, any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the common seal of the governor and company of the Bank of England, or any indorsement thereon, or shall *offer*, or *dispose of*, or *put away*, any such forged, counterfeit or altered note, bill, dividend warrant, bond, or obligation, or the indorsement thereon, or demand the money therein contained, or pretended to be due thereon, or any part thereof, of the said company, or any of their officers or servants, knowing such note, bill, dividend warrant, bond, or obligation, or the indorsement thereon, to be forged, counterfeited, or altered, with intent to defraud the said governor and company, or their

*note (e)*, the tenor (*f*) of which said forged and counterfeit bank note is as followeth, that is to say, (*the note is here set out verbatim (g),*) with intent (*h*) to defraud the governor and company of the bank of England, against the form of the statute, &c. and against the peace, &c.

(*End Count.*) That the said J. B. heretofore, that is to say, on, &c. with force and arms, at, &c. *did dispose of and put away (i)* a certain forged and counterfeited bank note, the tenor of which said last-mentioned forged and counterfeit bank note is as followeth, that is to say, (*the note,*) with intent to defraud the governor and company of the

successors, or any other person or persons, body or bodies politic or corporate, whatsoever, every person or persons so offending, and being thereof convicted, in due form of law, shall be deemed guilty of felony, and suffer death as a felon, without benefit of clergy.

By sec. 3. of the same stat. if any unauthorised person shall make use, &c. or have in possession, without lawful excuse, (the proof whereof shall lie on the party accused,) any frame, mould, or instrument for the making of paper with curved or waiving bar lines, or with the laying wire lines thereof in a waved or curved shape, or with any number, sum, or amount, expressed in a word or words in Roman letters, visible in the substance of such paper; or who shall make, use, or vend, &c. the same, or shall knowingly have such in possession, or shall cause or procure the numerical sum or amount of any bank note, &c. in any word or words in Roman letters, to appear visible in the substance of the paper, whereon the same shall be written or

printed, he shall be adjudged a felon, and shall be transported for the space of 14 years.

(*d*) These are the words of the statute; it is unnecessary to allege that he did *falsely* forge and counterfeit, see p. 91. This count is framed upon the stat. 45 G. 3. c. 89. s. 2.

(*e*) It is essential to shew, that the instrument forged is of the description prohibited by the stat. see p. 97. As to the averments which are necessary, when the forged writing does not purport to be of the kind prohibited, see p. 97.

(*f*) As to the words by which the instrument is usually introduced, see p. 93. *Lyon's case*, Leach, 696.

(*g*) As to the accuracy with which the forged writing should be set out, see p. 93, 95.

(*h*) See p. 103, 168. as to the general necessity for averring an intent to defraud, in case of perjury, the form of the averment, and the effects of variance.

(*i*) According to the words of the act, 45 G. 3. c. 89. s. 2,

bank of England; he the said J. B. at the said time of his so disposing of and putting away the said last-mentioned forged and counterfeit bank note, then and there, to wit, on, &c. at, &c. well knowing such last-mentioned note to be forged and counterfeited, against the form of the statute, &c. and against the peace, &c.

(3rd Count (k).) Feloniously, did *falsely make (l), forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false making, forging, and counterfeiting a certain promissory note* for the payment of money, the tenor of which said last-mentioned false, forged, and counterfeited note is as followeth, that is to say, (*note as before,*) with intention to defraud the governor and company of the bank of England, against the form (m), &c. and against the peace, &c.

(k) This count is framed upon the stat. 45 G. 3. c. 89. which supersedes the stat. 2 G. 2. c. 25. the operation of which was extended to the protection of corporations by the stat. 31 G. 2. c. 22. s. 78.

(l) See the words of the statute.

(m) By the stat. 2 G. 2. c. 25. made perpetual by the st. 9. G. 2. c. 18. if any person shall *falsely make, forge, or counterfeit, or cause or procure to be falsely made, &c. or willingly act or assist in the false making, &c.* any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement, or assignment of any bill of exchange or promissory note for payment of money, or any acquittance or receipt either for money or goods, with intent to defraud any person whatsoever, (and by stat. 31 G. 2. c. 22. s. 78. with

intent to defraud any corporation whatsoever, or shall *utter or publish as true*, any false, forged, or counterfeited deed, &c. with intent to defraud any person or corporation,) knowing the same to be false, forged, and counterfeited, every such person, being thereof lawfully convicted, shall be deemed guilty of felony without benefit of clergy.

The stat. 7 G. 2. c. 22. made to supply the defects of the former acts, which it recites, and reciting farther that no punishment is inflicted by the said act on such as commit the offences therein after set forth, enacts, that “if any person shall *falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, &c. or willingly act or assist in the false making, &c.* any acceptance of any bill of exchange, or the number or principal sum of any accountable

(4th Count.) Feloniously did *dispose of and put away* (n), a certain false, forged, and counterfeited pro-

receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money or delivery of goods, with intent to defraud any person whatsoever, (and by stat. 18 G. 3. c. 18. with intent to defraud any corporation,) or shall utter or publish as true, any false, altered, forged, or counterfeited acceptance of any bill of exchange, or accountable receipt, for any note, bill, or other security for payment of money, or warrant or order for payment of money, or delivery of goods, with intention to defraud any person (or corporation) knowing the same to be false, altered, forged, or counterfeited, then every such person being thereof lawfully convicted, shall be deemed guilty of felony without benefit of clergy.

In the stat. 7 G. 2. there is no express saving of corruption of blood, as in the others, and by s. 4. of the stat. 2 G. 2. c. 25. the act is not to extend to Scotland.

The st. 45 G. 3. c. 89. after noticing the st. 2 G. 2. c. 25. 7 G. 2. c. 22. 31 G. 2. c. 27. 15 G. 2. c. 22. 41 G. 3. c. 39. and reciting that it is expedient that such provisions should extend and be in force in every part of Great Britain, with such alterations and amendments therein, as are

hereby made, enacts, that if any person or persons shall *falsely make, forge, counterfeit or alter*, or cause, or procure to be falsely made, counterfeited, or altered, or willingly act or assist in the false making, forging, counterfeiting, or altering, any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement, or assignment of any bill of exchange or promissory note for payment of money, acceptance of any bill of exchange, or any acquittance or receipt, either for money or goods, or any accountable receipt for any note, bill, or other security for payment of money, or any warrant, or order for payment of money, or delivery of goods, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever, or shall *offer, dispose of, or put away*, any false, forged, counterfeited, or altered deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement, or assignment, of any bill of exchange, or promissory note for payment of money, acceptance of any bill of exchange, acquittance, or receipt, either for money or goods, accountable receipt for any note, bill, or other security for pay-

missory note for the payment of money, the tenor of which said last-mentioned false, forged, and counterfeited note is as followeth, that is to say, (*note as before,*) with intent to defraud the governor and company of the bank of England, he the said J. B. at the said time of his so disposing of and putting away the said last-mentioned false, forged, and counterfeited note, then and there, to wit, on, &c. at, &c. well knowing the same last-mentioned note to be false, forged, and counterfeited, against the form, &c. and against the peace, &c.

(5th Count.) Feloniously did forge and counterfeit a certain other bank note, the tenor of which said last-mentioned forged and counterfeit bank note is as followeth, that is to say, (*note as before,*) with intent to defraud one J. S. against the form, &c. and against the peace, &c.

(6th Count.) Feloniously did dispose of and put away, a certain other forged and counterfeited bank note, the tenor of which said last-mentioned forged and counterfeited bank note is as followeth, that is to say, (*note as before,*) with intent to defraud the said J. S. he the said J. B. at the time of his so disposing of and putting away the said last-mentioned forged and counterfeit bank note, then and there, to wit, on, &c. well knowing such last-mentioned note to be forged and counterfeited, against the form, &c. and against the peace, &c.

(7th Count.) Feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false making, forging and counterfeiting a certain other promissory note for the payment of money, the tenor of which said last-mentioned forged and counterfeited note is as followeth, that is to say, (*note as before,*) with intention to defraud the said J. S. against the form, &c. and against the peace, &c.

ment of money, warrant, or order, for payment of money, or delivery of goods, with intention to defraud any person or person, body or bodies politic or corporate, knowing the same to be false, forged, counterfeited, or altered, then every person or persons so offending,

and being thereof lawfully convicted, according to the due course of law, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy.

(n) See the stat. 45 G. 3. c. 89. in the preceding note.

(8th Count.) Feloniously *did dispose of and put away*, a certain other false, forged, and counterfeited promissory note for payment of money, the tenor of which said last-mentioned false, forged, and counterfeited note is as followeth, that is to say, (*note as before,*) with *intention to defraud the said J. S.* the said J. B. at the said time of his so disposing of and putting away the said last-mentioned false, forged, and counterfeited note, then and there, to wit, on, &c. well knowing the same last-mentioned note to be false, forged, and counterfeited, against the form, &c. and against the peace, &c.

135. *For having in possession forged bank of England notes without lawful excuse, knowing the same to be forged (o).*

(Commencement as in *pr. 1.*) *Feloniously, knowingly, and wittingly, and without lawful excuse*, had in his possession and custody, divers forged and counterfeited bank notes, that is to say, one forged and counterfeited bank note, the tenor of which said forged and counterfeited bank note is as followeth, that is to say, (*here the note is set out*), and one other forged and counterfeited bank note, the tenor of which said last-mentioned forged and counterfeited bank note is as followeth, that is to say, (*here the other note is set out,*) he the said A. B. then and there, to wit, on, &c. at, &c. *well knowing* the same notes

(o) See the stat. 41 G. 3. c. 39. *supra*. By the stat. 45 G. 3. c. 89. s. 6. it is enacted, that if any person or persons shall purchase, or receive from any other person or persons, any forged or counterfeited bank note, bank bill of exchange, bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged or counterfeited, or shall knowingly or wittingly have in his, her, or their possession or custody, in his, her, or their dwelling-house, out-

house, lodgings, or apartment, any forged or counterfeited bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged and counterfeited, without lawful excuse, (the proof whereof shall lie upon the person accused,) every person or persons so offending, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of 14 years.

to be forged and counterfeited, against the form of the statute, &c. and against the peace, &c.

(*2nd Count.*) Feloniously, knowingly, wittingly, and without lawful excuse, had in his possession and custody a certain other forged and counterfeit bank note, the tenor of which said last-mentioned forged and counterfeited bank note is as followeth, that is to say, (*the first note in the preceding count is here set out again,*) he the said A. B. then and there, to wit, on, &c. at, &c. well knowing the same last-mentioned note to be forged and counterfeited, against the form of the statute, &c. and against the peace, &c.

136. *Indictment for forging, &c. a bill of exchange, an acceptance thereof, and an indorsement thereon.*

(*Comm. as in pr. 1.*) (a) Feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false making, forging, and counterfeiting,\* a certain bill of exchange; the tenor of which said false, forged, and counterfeited bill of exchange is as follows, that is to say (b),

No. £54. 1s. Bristol, America, 17th Sept. 1797.

Three months after sight pay to Messrs. S. R. and Son, or order, fifty four pounds one shilling, value received.

A. M.

To Mr. R. G.

Old Change,

London.

with intention (c) to defraud A. S. against the form, &c. and against the peace, &c.

(*Second count for uttering, &c. (d).*) Feloniously did utter and publish as true a certain false, forged, and counterfeited bill of exchange; which said last-mentioned false, forged, and counterfeited bill of exchange is as follows, that is to say, (*set out the bill as before,*) with intention to defraud the said A. S. (he the said A. B. at the said time he so uttered and published the said last-mentioned false, forged, and counterfeited bill of ex-

(a) See the stat. 2 G. 2. c.

25. 7 G. 2. c. 22. 45 G. 3.

c. 89. p. 489, 490.

(b) See p. 39.

(c) See p. 103.

(d) See the st. 2 G. 2. c. 25.

45 G. 3. c. 89. see p. 489, 490.



change as aforesaid, then and there, to wit, on, &c. at, &c. well knowing the same to be false, forged, and counterfeited, against the form, &c. and against the peace, &c.

(*Third count (e) for forging an acceptance.*) That the said A. B. having in his possession a certain other bill of exchange (*f*), whose tenor follows, that is to say, (*set out the bill.*)\* on, &c. with force and arms, at, &c. feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false making, forging, and counterfeiting, on the said last-mentioned bill of exchange,\*\* an acceptance of the said last-mentioned bill of exchange, to the tenor following, that is to say, *Accepted, R. G. Nov. 13th*, with intent to defraud the said A. S. against the form, &c. and against the peace, &c.

(*Fourth count, for uttering a forged acceptance, as in the last count to the \*.*) On which said last-mentioned bill of exchange was written a certain false, forged, and counterfeited acceptance of the said last-mentioned bill of exchange, whose tenor follows, that is to say, *accepted, R. G. Nov. 13th*, on, &c. with force and arms, at, &c. feloniously did utter and publish as true the said last-mentioned false, forged, and counterfeited acceptance of the said last-mentioned bill of exchange, with intent to defraud the said A. S. (he the said A. B. at the time of uttering and publishing as true the said last-mentioned false, forged, and counterfeited acceptance of the said last-mentioned bill of exchange, then and there, to wit, on, &c. at, &c. well knowing the said last-mentioned false, forged, and counterfeited acceptance to be false, forged, and counterfeited, against the form, &c. and against the peace, &c.

(*Fifth count, for forging an indorsement, &c. as in the third count to the \*\*.*) an indorsement (*g*) of the said last-

(e) See the stat. 45 G. 3. c. 89. vide supra, p. 490.

(f) It is usual, in a count of this kind, first to aver the date, direction, and other circumstances of the bill, and then to set it out, but the first averments seem to be superfluous, and the above form is

much more concise. It does not appear to be absolutely essential to set out the whole of the bill, since the *acceptance only* is alleged to have been forged. See p. 95, 6.

(g) See p. 100. *R. v. Biggs*, 3 P. Wms. 419. See the stat. p. 489, 490.

mentioned bill of exchange, whose tenor follows, &c. that is to say, *S. R. and Son*, with intent to defraud, &c. (*as before.*)

(*Sixth count for publishing a forged indorsement, &c.; the form is the same with that of the fourth count, substituting the indorsement and its tenor for the acceptance and its tenor,*) against the form, &c. and against the peace, &c.

137. *Indictment for forging and publishing a receipt for payment of money (h).*

(*As in pr. 136 to the \*.*) A certain acquittance and receipt (i) for money, to wit, for the sum of three pounds and three shillings, in the words, letters, and figures following, that is to say, "August the 26th, 1781. Receiv'd of Mr. J. B. for Moustone quarry, the full sum of three pounds three shillings. Receiv'd by me, T. F." with intent to defraud T. B. &c. &c. against the form, &c. and against the peace, &c. (*Second count, for uttering.*) A certain false, forged, and counterfeited acquittance and receipt for money, to wit, for the sum of three pounds and three shillings, feloniously did utter and publish as true; which said last-mentioned false, forged, and counterfeited acquittance and receipt is in the words, letters, and figures following, that is to say, (*set out the receipt as before,*) with intent to defraud the said T. B. he the said A. B. at the time when he so uttered and published the said last-mentioned false, forged, and counterfeited acquittance and receipt, well knowing the same acquittance and receipt, so by him uttered and published, to be false, forged, and counterfeited, against the form, &c. and against the peace, &c.

138. *Indictment for feloniously altering a bank note (k).*

(*Comm. as in pr. 1.*) Having in his possession a bank

(h) See the st. 2 G. 2. c. 25. 45 G. 3. c. 89. Vide supra, p. 489, 490. receipt, it must be shewn, by the aid of proper averments, that it could so operate. See p. 100.

(i) Unless the instrument on the face of it appear to be a (k) See p. 91.

note, whose tenor follows, that is to say, (*set out the note,*) feloniously did alter (!) the said bank note, by then and there falsely obliterating and defacing the letters *een* before printed in the word *fifteen* in the said bank-note, and also the letters *een* before printed in the word *fifteen*, in white letters, on a black ground underneath the said bank note; and by then and there falsely making, forging, and counterfeiting, upon the said bank note, in the place of the first-mentioned letters *een*, before printed in the word *fifteen* in the said bank note, the letter *y*; and also by then and there falsely making, forging, and counterfeiting, upon the said bank note, in the place of the said letters *een*, before printed in the word *fifteen* in white letters on a black ground underneath the said bank note, another letter *y*; by reason and means of which said obliterating and defacing the said letters *een*, before printed in the said word *fifteen* in the said bank note, and also the letters *een*, being before printed in the said word *fifteen*, in white letters, on a black ground underneath the said bank note; and of falsely making, forging, and counterfeiting, upon the place of the said letters *een*, before printed in the word *fifteen* in the said bank note, the letter *y*; the letters *fift*, so remaining of the said word *fifteen* before printed in the said bank note, with the said first-mentioned letter *y*, so falsely made, forged, and counterfeited as aforesaid, did become, import, and signify *fifty*; and the letters *fift*, so remaining of the said *fifteen*, before printed in white letters, on a black ground underneath the said last-mentioned bank note, with the said other *y*, so falsely made, forged, and counterfeited as aforesaid, did become, import, and signify, *fifty*; which said altered bank note is in the words, letters, and figures following, that is to say, (*set out the note as altered,*) with intent to defraud, &c. (*as in pr. 134, alleging in one count an intention to defraud the governor and company of the bank of England; in another, an intention to defraud the person to whom it is paid, &c.; add other counts alleging the forgery of the bank note as altered, and for uttering with intent to defraud, &c. see pr. 134.*)

(1) See the stat. 15 G. 2. c. 13. s. 11. 45 G. 3. c. 69. s. 2. *supra*, p. 486, 7.

138. *Indictment for forging a bond signed with a mark, and publishing the same with intent to defraud the executors of the person supposed to have made it (m).*

(Commencement as in *pr.* 136 to the \*.) A certain bond, purporting (n) to be signed by one J. L. (then deceased) in his life-time, with the *mark* of him the said J. L. and to be sealed (o) and delivered by the said J. L. in his life-time, the *tenor* of which said bond is as follows, (*set out the bond*), “the mark of J. L. Sealed and delivered in the presence of, the mark of A. B., C. D.” with intent to defraud W. B. and T. W. executors of the last will and testament of the said J. L. of the sum of two hundred and fifty pounds, against the form of the statute, &c. and against the peace, &c. (*n2d count.*) That the aforesaid A. B. and C. D. afterwards, to wit, on, &c. at, &c. a certain false, forged, and counterfeit bond, purporting to have been signed by the said J. L. (then deceased) in his life-time with his mark, and to have been sealed and delivered by the said J. L. in his life-time, with force and arms, feloniously did utter and publish as a true bond; which said bond, so as aforesaid falsely made and counterfeited, is in the words and figures following, (*set out the bond*), with intent to defraud the said W. B. and T. W. executors of the last will and testament of the said J. L. of the sum of two hundred and fifty pounds; (the said A. B. and C. D. at the time of publishing the said last-mentioned false, forged, and counterfeit bond, by them as aforesaid, then and there well knowing, and each of them well knowing, the same to have been false, forged, and counterfeited,) against the form of the statute, &c. and against the peace, &c.

(m) Under the stat. 2 G. 2. of the term *purport*, see p. 97, c. 25. and 45 G. 3. c. 89. See 98, 99.  
note, p. 490.

(o) This allegation is necessary, see p. 101.

139. *Indictment (p) for forging a receipt of the Sun Fire Office Society (q).*

That on, &c. there was, and ever since hath been, and now is, a certain society, corporation, and company of persons, during all the time aforesaid, known by the name of the Society of the Sun Fire Office in London; and that the said society, during all the time aforesaid, were, and are, a certain company and corporation of persons associated together in copartnership, for the purpose of insuring houses and other buildings, goods, wares, and merchandizes, from loss and damage by fire, upon certain terms and conditions agreed upon between the said society and the persons making such insurances, and in consideration of certain sums of money paid by persons making and continuing such insurance to the said society as premiums or rewards for such insurances, to wit, at R. in the said county of B. and that on, &c. one R. B. of R. aforesaid, grocer, had caused the household goods and furniture of him the said R. B. in his then and now dwelling-house, situate in R. aforesaid, to be insured by the said society from loss or damage by fire, not exceeding the sum of one hundred pounds; the utensils and stock of the said R. B. therein, and in the warehouse under the same roof, to be insured by the said society from loss or damage by fire, not exceeding the sum of seventeen hundred and seventy pounds; and three tenements of the said R. B. adjoining, in R. aforesaid, then in the tenure of H. C. and others, labourers, to be insured by the said society from loss or damage by fire, not exceeding the sum of one hundred and thirty pounds, upon certain terms and conditions then agreed upon between the said R. B. and the said society, to wit, at R. aforesaid; and the jurors aforesaid, upon their oath aforesaid, do further present, that R. S. late of R. aforesaid, gentleman, on &c. and for six months or more before that time, and continually from thence until the day of the taking of this inquisition, was an agent of the said society, intrusted by the said society to receive, for the use of the

(p) From the C. C. A. 1787. tions by the stat. 31 G. 2. c. 22. s. 78. re-enacted by stat. 45

(q) Upon the stat. 2 G. 2. c. 25. as extended to corpora- G. 3. c. 89. See note, p. 490.

said society, monies paid to the said R. S. as an agent of the said society, for the use of the said society, as and for premiums and rewards for such insurances, made and continued by the said society, to wit, at R. aforesaid, in the said county of B.; and the jurors aforesaid, upon their oath aforesaid, do further present, that W. H. late of R. aforesaid, gentleman, on, &c. well knowing the premises, with force and arms, at, &c. in the said county of B. feloniously did falsely make, forge, and counterfeit, and feloniously did cause and procure to be falsely made, forged, and counterfeited, and feloniously did willingly act and assist in the false making, forging, and counterfeiting, a certain receipt for money (r), purporting to be a receipt given to the said R. B. for the sum of three pounds and eighteen shillings, received from the said R. B. for the use of the said society, by the said R. S. as the agent of the said society, as and for a premium and reward paid by the said R. B. to the said R. S. as agent of the said society, for the use of the said society, for the continuance of the said assurance made by the said R. B. as aforesaid, for one year, from &c. until, &c. which said false, forged, and counterfeited receipt for money, so falsely made, forged, and counterfeited as aforesaid, is in the words, letters, figures, and cyphers following, to wit,—“Pol. No. 374,382, at 3*l*. 18*s*. per annum; Rect. No. 47,230. Received of Mr. R. B. the sum of three pounds eighteen shillings, for one year’s insurance in the Sun-fire-office; London, from Michaelmas last to Michaelmas next, by us, members of the said office, the second day of October, 1781. Henry Plant. Frederick Pigou. Witness R. S.” and which said false, forged, and counterfeited receipt for money, in the said words, letters, figures, and cyphers, at the time of falsely making, forging, and counterfeiting the same, did, and still doth, import and signify, that the said R. S. had, on, &c. received, as the agent of the said society, for the use of the said society, the sum of three pounds and eighteen shillings from the said R. B. as a premium and reward for the continuance of the said insurance, so made by the said

(r) It seems to be unnecessary to set out the purport of the receipt following,” and then to set out here, see p. 97, 98, 99. It would be better, after the word

R. B. as aforesaid, for one year, from, &c. until, &c. with intent to defraud the said R. S. against the form of the statute in such case made and provided, and against the peace, &c. (2d count.) That the said R. S. being an agent of the said society as aforesaid, and the said R. B. having made such insurance as aforesaid, the said W. H. on, &c. well knowing the premises aforesaid, with force and arms, at R. aforesaid, in the county aforesaid, feloniously did falsely make, forge, and counterfeit, and feloniously did cause and procure to be falsely made, forged, and counterfeited, and feloniously did willingly act and assist in the false making, forging, and counterfeiting, a certain receipt for money(s), whose tenor follows, that is to say, (*set out the receipt and explain the import, and conclude as before,*) with intent to defraud the said R. B. against the form of the statute, &c. and against the peace, &c. (3d count.) That the said R. S. being an agent of the said society as aforesaid, and the said R. B. having made such insurance as aforesaid, the said W. H. on, &c. well knowing the premises aforesaid, with force and arms, at ——— aforesaid, in the county aforesaid, feloniously did utter and publish, as true, a certain false, forged, and counterfeited receipt for money, whose tenor follows, that is to say, (*set out the receipt, its import, allege the publication, and conclude as in preceding count.*)

140. *Indictment for altering an accountable receipt, given by one of the clerks of the bank of England (t).*

That J. H. late of, &c. gentleman, on, &c. having in his custody and possession a certain accountable receipt

(s) In the original the purport is set out as in the first count.

(t) R. v. Harrison, Leach, 215. The first four counts of this indictment are given in the C. C. A. 280. I have omitted the two first counts (upon which the prisoner was acquitted,) and which appear

to be vicious for averring, that the receipt, upon which the indictment is founded, purports to be a receipt given by one J. C. on behalf of the governor and company of the bank of England, since in fact it does not so purport, see p. 97, 98. The same objection applied to the third count,

for bank notes for payment of money, given on, &c. by J. C. who then was and still is a clerk of the governor and company of the bank of England, for and on behalf of the said governor and company, to a certain corporation called The London Assurance, for divers bank notes then received by him the said J. C. from the said corporation called The London Assurance, for the said governor and company (the said last-mentioned bank notes being notes for payment of money, to wit, for the payment of the sum of two hundred and ten pounds), which said accountable receipt for bank notes for payment of money was then in the words, letters, figures, and cypher following, that is to say, "1777. June 16, bank notes, C. £210;" which said last-mentioned figures and cypher 210, did import, signify, and express two hundred and ten pounds; he the said J. H. on, &c. with force and arms, at, &c. feloniously did falsely *alter* (u), and feloniously did cause and procure to be falsely altered, and feloniously did willingly act and assist in the false altering, the principal sum of the said accountable receipt for the last-mentioned bank notes for payment of money, to wit, the said sum of two hundred and ten pounds, by feloniously and falsely making, forging, counterfeiting, and prefixing, and feloniously causing and procuring to be falsely made, forged, counterfeited, and prefixed, and feloniously and willingly acting and assisting in the false making, forging, counterfeiting, and prefixing, the figure 3 to the said figures and cypher 210, whereby the words, letters, figures, and cypher, "1777.

which I have ventured to alter.

The prisoner was convicted on the two counts inserted above, and also on similar counts, charging an intention to defraud the governor and company of the Bank of England and the London Assurance of houses and goods from fire. But it was doubted whether the st. 7 G. 2. c. 22. on which the counts were framed upon which

the prisoner had been found guilty, extended to corporations, and the prisoner was not executed.

The stat. 18 G. 3. c. 18. afterwards removed all doubt upon the subject. The offence is also prohibited by the stat. 45 G. 3. c. 89. See note, p. 490.

(u) See the observations, p. 91, 92.



June 16, bank notes, C. £210," together with the figure 3, so falsely made, forged, counterfeited, and prefixed as aforesaid, then did, and still do, import, signify, and express, that the said J. C. as clerk of the said governor and company of the bank of England, had, on, &c. received of the said corporation, called The London Assurance, bank notes for payment of money to the amount of the sum of three thousand two hundred and ten pounds, with intention to defraud the said corporation called The London Assurance, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity (r).

(2nd count.) That the said J. H. on, &c. with force and arms, at, &c. *feloniously did utter and publish as true*, a certain false, altered, forged, and counterfeited accountable receipt for bank notes for payment of money, which said last-mentioned false, altered, and forged accountable receipt for bank notes for payment of money was, and is, in the words, letters, figures, and cypher following, to wit, " 1777. June 16, bank notes, C. £3210;" and which said last-mentioned false, altered, and forged accountable receipt, in the said words, letters, figures, and cypher, last mentioned, then did, and still doth, import, (*aver the import as before*) with intention to defraud the said corporation called The London Assurance (he the said J. H. at the time he so as aforesaid uttered and published, as true, the said last-mentioned false, altered, forged, and counterfeited accountable receipt for bank notes for payment of money, well knowing the same to be false, altered, forged, and counterfeited), against the form of the statute, &c. and against the peace, &c.

(r) The defendant is in this count specially charged with the *alteration* of the receipt, but he may, in such case, be charged generally with the forgery of the whole. See Dawson's case, p. 92.

141. *Indictment for forging a will (s).*

That S. L. widow, heir at law of Sir A. C. knight, deceased, on, &c. and long before, was, and still is (t), seized in her demesne as of fee of and in certain messuages and tenements, with the appurtenances, situate and being in, &c. as heir at law of the said A. C. who died seized thereof in his demesne as of fee; and that E. B. late of, &c. gentleman, and M. M. late of, &c. on, &c. with force and arms, at, &c. (*as in pr. 136 to the \**;) a certain paper writing, with a seal thereto affixed, purporting (u) to be the last will and testament of the said Sir A. C. deceased, and to be signed by the said Sir A. C. in his life-time with the name of A. C. and to be sealed and delivered by the said Sir A. C. in his life-time as and for his last will and testament (x); the tenor of which said false, forged, and counterfeited will in writing is as follows, that is to say, "in the name of God, amen: I, A. C. &c." (*set out the will*;) with intent to defraud the said S. L. of the said messuages and tenements, with the appurtenances, against the form, &c. and against the peace, &c. (*2nd count, inducement as in the first*) and that the said E. B. and M. M. afterwards, to wit, on the said, &c. at, &c. aforesaid, a certain false, forged, and counterfeited paper writing, with a seal thereto affixed, purporting to be the last will and testament of the said Sir A. C. deceased, and to be signed by the said Sir A. C. in his life-time with the name of A. C. and to be sealed and delivered by the said

(s) Under the st. 2 G. 2. c. 25. and 45 G. 3. c. 89. vide *supra*, note, p. 490. This was the indictment used in the case of Birch and Martin, who were tried and executed for having forged Sir A. Chadwick's will. See Leach, 92, and p. 97.

(t) This inducement does not appear to be necessary under the above stat. since the crime of forgery is complete by the false making of the instrument, although from circum-

stances the intention cannot be carried into effect. See p. 102. and p. 168.

(u) As to this allegation, see p. 93.

(x) It was objected to this indictment, that it did not allege that the will purported to be attested by three witnesses, but since that fact appeared from the tenor set out, it was holden to be sufficient. East. P. C. 980. Leach, 92.

Sir A. C. in his life-time as and for his last will and testament, with force and arms, feloniously did utter and publish as a true will in writing; the tenor of which said false, forged, and counterfeited will in writing is as follows, that is to say, (*set out the will,*) with intention to defraud the said S. L. of the said last-mentioned messuages and tenements, with the appurtenances, (they the said E. B. and M. M. at the time of the uttering and publishing of the said false, forged, and counterfeited will in writing by them as aforesaid, then and there well knowing (y) the same will to be false, forged, and counterfeited,) against the form, &c. and against the peace, &c. (*3rd count, stating that the said Sir A. C. died seized, &c. without making a will, &c.*) And the jurors, &c. that the said Sir A. C. knight, deceased, was in his life-time, to wit, on, &c. and long before, seized in his demesne as of fee of and in certain messuages and tenements, with the appurtenances, situate and being in, &c. and on, &c. at, &c. aforesaid, died so seized of and in the said messuages and tenements, with the appurtenances, without disposing thereof by his last will and testament to any person or persons whatsoever\*, whereby the said messuages and tenements, with the appurtenances, at the parish last aforesaid, upon the death of the said Sir A. C. descended and came to the said S. L. as the heir at law of the said Sir A. C. and that the said E. B. and M. M. afterwards, to wit, on, &c. (*and proceed as in the first count.*) (*4th count, for uttering, with intent to defraud the person who would by law be intitled, &c. as in the last count, to the \*, then allege the uttering, &c. as in the 2nd count.*) With intention to defraud the person or persons who would by law be entitled to the aforesaid messuages and tenements, with the appurtenances, whereof the said Sir A. C. died so seized as aforesaid, (*allege the guilty knowledge, and conclude as in the second count.*)

(y) It was objected that the knowing," but the objection indictment should have alleged " and each of them was over-ruled. East. P. C. 980.

142. *Indictment for feloniously personating another person, and becoming bail in his name before a commissioner of the court of Common Pleas appointed to take bail in the country (z).*

That on, &c. our said lord the king, by his writ of *capias* issued out of the court of our said lord the king, of Common Pleas at Westminster, bearing date the same day and year, directed to the sheriff of ———, did command the said sheriff, that he should take C. D. late of ———, yeoman, and J. D. if they should be found in his bailiwick, and them safely keep, so that he might have their bodies before the justices of our said lord the king, at Westminster, in three weeks from the day of St.

(z) By stat. 4 Will. & M. ch. 4. s. 4. (entitled, "An Act for taking special Bails in the Country, upon Actions and Suits depending in the Courts of King's Bench, Common Pleas, and Exchequer, at Westminster,") it is enacted, that if any person or persons shall (before any person or persons empowered by virtue of that act to take bail or bails) represent or personate any other person or persons, whereby the person or persons so represented and personated, may be liable to the payment of any sum or sums of money, for debt or damages to be recovered in the same suit or action, wherein such person or persons are represented and personated, as if he or they had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed, and be taken to be felons, and suffer as such.

By stat. 21 Jac. 1. c. 26. all persons who shall acknowledge or procure to be acknowledged, any fine or fines, recovery or recoveries, deed or deeds inrolled, statutes, recognizances, bail, or judgment, in the name of any person or persons not privy or consenting to the same, and being thereof lawfully convicted or attainted, shall incur the penalties of such felons without benefit of clergy.

A bail before a judge was not bail within this statute, till it was filed of record, and if it was not filed, the acknowledging thereof in another's name was not felony but a misdemeanor only; but now it is felony by stat. 4 Will. & M. c. 4. Vide 27 Geo. 3. c. 43. respecting special bail at Chester. St. 4 Geo. 3. c. 46. s. 5. as to palatine of Lancaster.

Michael, to answer to E. F. of a plea that (*according to the exigency of the writ,*) which said writ afterwards, and before the delivery thereof to the said sheriff of the said county of ——— to be executed on, &c., at, &c. was duly marked and indorsed for bail for the sum of ———*l.* according to the form of the statute (*a*) in such case made and provided, and which said writ, so indorsed, afterwards, and before the return thereof, to wit, on, &c. at, &c. was delivered to G. H. esq. then sheriff of the county aforesaid, in due form of law to be executed, which said G. H. sheriff of the county aforesaid, by virtue of the writ aforesaid, afterwards, and before the return thereof, to wit, on the said ——— day of ———, in the year aforesaid, and within his bailiwick as such sheriff, to wit, at, &c. did take and arrest the said C. D. in the said writ and warrant above named, according to the command of the writ and warrant aforesaid, and him the said C. D. then and there had in his custody, by virtue of the said writ; and that A. B. late of, &c. yeoman, contriving and intending to prejudice and bring one S. T. to great expenses, and unlawfully to subject him the said S. T. to the payment of a great sum of money, afterwards, to wit, on, &c. at, &c. in his own proper person came before C. T. gentleman, and then and there, with force and arms, feloniously did represent and personate the person of the said S. T. of, &c. yeoman, and in the name and by the addition of him the said S. T. did become bail for the said C. D. in a certain recognizance taken before the said C. T. in the action aforesaid (he the said C. T. then and there having full and lawful power and authority, by virtue of a commission under the seal of the said court of Common Pleas, to take a recognizance in that behalf in the said county of ———, according to the form of the statute in such case made and provided,) by which said recognizance he the said A. B. (by feloniously representing and personating the person of the said S. T.) in the name and by the addition of him the said S. T. as aforesaid, before the said C. T. then and there unlawfully and feloniously did acknowledge to owe to the said E. F. the sum of ———*l.* to be levied upon the goods and chattels, lands and tenements, of him the said S. T. upon condi-

(a) 12 G. 1. c. 29. s. 9.

tion that if the said C. D. should be condemned in the said action, he the said C. D. should pay the condemnation money, or render himself into the Fleet for the same; or if he failed so to do, he the said S. T. (meaning the said S. T. of ———, in the county aforesaid, yeoman, so represented and personated by the said A. B. as aforesaid) did undertake to do it for him (meaning the said C. D.) whereby he the said S. T. so represented and personated as aforesaid, *might* have been liable to the payment of the said sum of ———*l.* to be recovered in the same action, as if he had really himself acknowledged and entered into the said recognizance, against the form, &c. and against the peace, &c.

143. *Indictment at common law for forging a writ of fieri facias, and thereby taking a person's goods in execution.*

That L. Y. late of, &c. gentleman, falsely, unlawfully, and wickedly devising, contriving, and intending one A. K. late of the same parish and county, yeoman, unjustly, maliciously, and injuriously to aggrieve, oppress, and impoverish, on, &c. with force and arms, at, &c. unlawfully, knowingly, subtilly, and falsely did forge and counterfeit a certain writing, engrossed on parchment, in form and to the likeness and similitude of a writ of our lord the king of *fieri facias*, whose tenor follows, that is to say, (*set out the forged writ accurately.*) And the jurors, &c. that the said L. Y. afterwards, to wit, on, &c. at, &c. the said false, forged, and counterfeit writing, falsely forged, purporting to be a writ of *fieri facias*, subtilly, falsely, knowingly, and deceitfully did pronounce and publish; and then and there, to wit, on the same, &c. at, &c.\* subtilly, falsely, knowingly, and deceitfully, as a true writ of our said lord the king of *fieri facias*, did cause to be delivered to the then sheriff of ———, for execution to be made thereof; and afterwards, to wit, on, &c. at, &c. did cause to be seized and taken divers goods and chattels of the said A. K. by pretence of that writ, to the great damage and oppression of the said A. K. and against the peace, &c. (*Second count, for publishing.*) A certain false, forged, and counterfeit writing, engrossed on parchment, falsely forged, in form and to the likeness and similitude of a writ of our said lord the king of *fieri facias*, issuing out of the said court of our said lord the king of

Common Pleas, unlawfully and deceitfully did pronounce and publish as a true writ of our said lord the king, whose tenor follows, that is to say, (*set out the writ,*) although he the said L. Y. then and there well knew the same to be false, forged, and counterfeited, and the same then and there, to wit, on, &c. at, &c. (*as in the first count, from the \*.*)

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## PERJURY.

144. *Indictment for PERJURY (b) at Chester assizes, in giving evidence on the trial of a felon.*

*Cheshire.* The jurors for our lord the king upon their

(b) But by stat. 5 Eliz. c. 9. s. 3. if any person or persons shall unlawfully and corruptly procure any witness or witnesses, by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever depending in suit and variance by any writ, action, bill, complaint, or information, in any wise touching or concerning any lands, tenements, or hereditaments, or any goods, chattels, debts, or damages, in any of the courts therein mentioned, (being of almost every description, except the ecclesiastical courts;) or shall unlawfully and corruptly procure or suborn any witness or witnesses, which shall be sworn to

testify in *perpetuam rei memoriam*, then every such offender or offenders shall, for his, her, or their said offence, being thereof lawfully convicted or attainted, lose and forfeit the sum of forty pounds.

By s. 4. Persons so convicted or attainted, not having goods or other property to the value of the penalty, shall suffer imprisonment for the space of half a year, and stand upon the pillory, for one hour, in some market-town next adjoining to the place where the offence was committed.

s. 5. Those convicted shall not be received as witnesses in any court of record, until such time as the judgment given against them be reversed, by attain or otherwise, and upon every such reversal the parties

oath present, that at the court of session and goal-delivery of our sovereign lord the king, holden for the county

grieved shall recover their damages, &c. (*as in the next section.*)

s. 6. One convicted\* or attainted of perjury by his deposition &c. shall forfeit twenty pounds, and be imprisoned for the space of six months; and the oath of such person shall not be received in any court of record until the judgment be reversed, by attainr or otherwise; and upon every such reversal the party grieved shall recover his damages against the person who procured the said judgment so reversed to be given against him, by an action on the case.

s. 7. If the offender has not goods sufficient to satisfy the twenty pounds, he shall be set on the pillory, in some market-place, near, &c.—and there to have both his ears nailed, and from thenceforth be disabled from being sworn in any court of record, until such time as the judgment shall be reversed, upon which he shall recover his damages as before mentioned.

s. 9. As well the judge and judges of every of the courts where any such suit is or shall

be, and whereupon any such perjury is or shall be committed†, as also the justices of assize and goal delivery in their several circuits, and the justices of the peace‡ in every county within this realm, or in Wales, at their quarter-sessions, both within liberties and without, shall have full power and authority to inquire of all offences and defaults committed contrary to this act, by inquisition, presentment, bill, or information, or otherwise lawfully to hear and determine the same, and to give judgment, award process, and execution of the same, according to the course of the laws of this realm.

The stat. 2 Geo. 2. c. 25. s. 2. (made perpetual by the st. 8 G. 2. c. 18.) enacts, that, besides the punishment already to be inflicted by law for so great crimes, it shall and may be lawful for the court or judge, before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, according to the laws now in being, to order such person to be sent to some house of correction,

\* This is good cause of challenge, if he be a juror. 2 Haw. c. 43. s. 25.

† A defendant under this charge may, upon his own confession that an affidavit made by him was false, be put in the pillory by the authority of the court in which the affidavit was made. Thorowgood's case, 8 Mod. 179.

‡ Justices of the peace have no jurisdiction over perjury at common law. R. v. Yarrington, Salk. 406. 2 Haw. c. s. s. 32.



of Chester, at the castle of Chester, in the same county, on, &c. before the honourable J. M. his majesty's chief

within the same county, for a time not exceeding seven years, there to be kept to hard labour during all the said time, or otherwise to be transported to some of his majesty's plantations beyond the seas, for a term not exceeding seven years, as the court shall think most proper, and thereupon judgment shall be given, that the person convicted shall be committed or transported accordingly; over and beside such punishment as shall be adjudged to be inflicted on such person, agreeable to the laws now in being; and if transportation be directed, the same shall be executed in such manner as is or shall be provided by law for the transportation of felons; and if any person so committed or transported, shall voluntarily escape or break prison, or return from transportation before the expiration of the time for which he shall be ordered to be transported as aforesaid, such person, being thereof lawfully convicted, shall suffer death as a felon, without benefit of clergy, and shall be tried for such felony in the county where he so escaped, or where he shall be apprehended.

By stat. 23 Geo. 2. c. 11. s. 1. it is enacted, that in every information or indictment to be prosecuted against any person for wilful and corrupt per-

jury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath was taken, (averring such court or person or persons to have a competent authority to administer the same,) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed; any law, usage, or custom to the contrary notwithstanding.

By s. 2. in every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, and without setting forth the commission or authority of the court, or per-

justice of and for the said county, and J. S. esq. his said majesty's other justice there, one G. B. was in due form of law tried upon a certain indictment then and there depending against him for having, on the 20th day of July, in the 25th year (c), &c. feloniously stolen, taken, and carried away nineteen guineas of the monies of one J. Earle; and that at the said trial, so then and there had as aforesaid, J. S. late of ———, labourer, appeared as a witness for and on behalf of the said G. B. upon the said trial, and was sworn and took his corporal oath (d) before the said J. M. and J. S. (e), justices as aforesaid, on the holy gos-

son or persons before whom the perjury was committed, or was agreed or promised to be committed; any law, &c. (*as before.*)

By sec. 3. the justices of assize, nisi prius, or general gaol-delivery, or any of the great sessions in Wales, or of the counties palatine (during the sitting of the court, or within twenty-four hours after), may direct prosecutions against persons, examined before them, committing of perjury, and assign the prosecutor counsel; and such prosecution shall be carried on without any tax, duty, or fees in court, or to any officer of the court; and the clerk of assize, or his associate or prothonotary, or other proper officer of the court, shall, without fee or reward, give the party injured, or other person undertaking such prosecution, a certificate of the same, being directed, together with the names of the counsel assigned by the court, &c.

As to perjuries committed by attorneys, solicitors, or

agents, in courts of law or equity, see 12 Geo. 1. c. 29. s. 4.; as to bankrupts, &c. 1 Jac. 1. c. 15. s. 9. 11. 5 Geo. 2. c. 30. s. 29; witnesses in courts martial respecting naval offences, 22 Geo. 2. c. 33. s. 17.; electors in London, 11 Geo. 1. c. 18. s. 3.; same, and returning officers, in counties, cities, boroughs, &c. 2 Geo. 2. c. 24. s. 5 & 6; insolvent debtors, 52 Geo. 3. c. 102. s. 28.

Quakers making solemn affirmation wilfully and corruptly, shall suffer as in cases of perjury. 8 Geo. 1. c. 6. s. 2. Vide also 22 Geo. 2. c. 46. s. 36.

(c) The original C. C. A. sets out the indictment at large, but this is unnecessary and improper, see p. 105.

(d) As to this averment, see p. 108.

(e) In Alford's case, Leach, 179. the names of both the justices then in the commission, were mentioned in the caption, and the oath was alleged to have been taken before one only. It was also objected that

pel (*f*) of God, to speak the truth, the whole truth, and nothing but the truth, of, upon, and concerning the matter then depending, (they the said J. M. and J. S. justices as aforesaid, then and there having sufficient and competent power and authority to administer an oath to the said J. S. in that behalf,\*) and the said J. S. being so sworn as aforesaid, wickedly contriving and intending to cause the said G. B. unjustly to be acquitted of the said felony, did then and there knowingly, falsely, corruptly, wilfully, and wickedly say, depose, and give in evidence to the jurors of the jury then and there duly taken and sworn between our said lord the king and the said G. B. before the said J. M. and J. S. justices as aforesaid, that he the said J. S. on the second day of Knutsford races (meaning the twenty-sixth (*g*) day of July, in the year of our Lord one thousand seven hundred and seventy-five, being the second of three successive days on which certain horse-races were run at Knutsford, in the said county of Chester, in that year,) was in a certain booth at Knutsford aforesaid, known by the sign of the Bull's Head, kept by one R. Graves; and that he the said J. Earle came into the said booth, and sat down by him,

there was a variance between the indictment and the *nisi prius* record of the cause, which stated, in the usual form, that the trial was before both the judges. But the judges held that the conviction was good.

(*f*) See p. 108.

(*g*) This innuendo is objectionable, since it alters the sense of the defendant's words. See p. 110. *Griepe's case*, *Ld. Ray*. 256. The objection would be obviated by alleging, after the\*, "and the jurors aforesaid, &c. do say, that the second of three successive days, upon which certain horse races had before then been run, at Knutsford, &c. was the 26th day of July, in the year of our

Lord, &c. and that it then and there, to wit, on, &c. at, &c. upon, the said trial, became and was a material question, whether the said J. Sadler, on the said second day of Knutsford races, was in a certain booth, &c. (*and after setting out the material questions,*) And the jurors now here sworn, upon their oath aforesaid, do further present, that the said J. S. being so sworn as aforesaid, &c." (*and then by proceeding as above.*) And an express allegation is necessary, in order to shew the *materiality* of the matter sworn to, which otherwise would not appear, see p. 107. As to the nature and use of innuendos, see p. 109.

(meaning himself the said J. S.) on the left-hand side; and that he (meaning himself the said J. S.) asked the said J. Earle if he (meaning the said J. Earle) was not ill; and that he (meaning the said J. Earle) said, I (meaning himself the said J. Earle) am well enough, I (meaning himself the said J. Earle) have been playing at cards with a parcel of men, and have lost a great deal of money; and that he the said J. S. said, man (meaning the said J. Earle) I (meaning himself the said J. S.) am very sorry for you (meaning the said J. Earle); and that the said J. S. upon his oath aforesaid, before the said jury so taken between our said lord the king and the said G. B. and the said J. M. and J. S. justices as aforesaid, did further say, depose, swear, and give in evidence, that the said J. Earle then and there took him the said J. S. by the hand, and said, I (meaning himself the said J. Earle) will never play at cards any more: whereas, in truth and in fact, the said J. Earle did not sit down by the said J. S. in the said booth, on the said twenty-sixth day of July; and whereas, in truth and in fact, the said J. S. did not ask the said J. Earle whether he was well or not; and whereas, in truth and in fact, the said J. Earle did not say to the said J. S. that he was well enough; and whereas, in truth and in fact, the said J. Earle did not say to the said J. S. that he the said J. Earle had been playing at cards with a parcel of men, and had lost a great deal of money; and whereas, in truth and in fact, the said J. S. did not say to the said J. E. that he (meaning himself the said J. S.) was sorry for him (meaning the said J. E.); and whereas, in truth and in fact, the said J. E. did not say to the said J. S. that he would never play at cards any more; and whereas, in truth and in fact, the said J. E. had not, on the said ——— day of ———, any conversation whatsoever with the said J. S.: and so the jurors aforesaid now here sworn, upon their oath aforesaid, do say, that the said J. S. at the said court of session and gaol-delivery of our sovereign lord the king, holden at the castle of Chester aforesaid, in and for the said county of Chester, before the said J. M. and J. S. then being such justices as aforesaid (and then and there having sufficient and competent power and authority to administer the said oath to the said J. S.) did, in manner and form aforesaid, commit wilful and corrupt perjury, against the peace, &c.

145. *Indictment for perjury committed on the execution of a writ of inquiry.*

That on, &c. at, &c. a certain writ of inquiry in a certain cause in which F. G. was plaintiff, and H. I. the defendant, came on to be executed, and was then and there executed before M. N. esq. then being sheriff of the said county, and that A. B. late of, &c. labourer, did then and there, before the said L. M. take his oath upon the Holy Gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters there in question between the said parties, he the said L. M. as such sheriff as aforesaid, then and there having sufficient and competent power and authority to administer the said oath to the said A. B. and that the said A. B. being so sworn as aforesaid, unlawfully, wickedly, and maliciously contriving, devising, designing, and intending to induce the jurors of a certain jury summoned, and then and there duly sworn, to inquire of the truth of the premises aforesaid, to find and give small and inconsiderable damages for the said F. G. the plaintiff aforesaid, on that inquest, and unjustly designing and intending to aggrieve, injure, and prejudice the said F. G. then and there, to wit, on, &c. at, &c. before the said M. N. being such sheriff as aforesaid, upon his said oath so taken as aforesaid, upon the occasion aforesaid, falsely, wickedly, maliciously, wilfully, and corruptly, did say, depose, affirm, and give in evidence before the said L. M. being such sheriff as aforesaid, and to and before the jurors of the said jury summoned to inquire as aforesaid, that (*set out the perjury and the averments to falsify:*) and so the jurors aforesaid now here sworn, upon their oath aforesaid, do say, that the said A. B. on, &c. at, &c. before the said L. M. being such sheriff as aforesaid, then and there having such authority as aforesaid, of his own most wicked, malicious, and corrupt mind and disposition, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great damage of the said F. G. and against the peace, &c.

146. *Indictment for perjury committed at the quarter sessions, upon the trial of an indictment for an assault.*

That on, &c. at, &c. at the court of general quarter

sessions of the peace, then and there holden in and for the said county of L. one C. D. was in due form of law tried upon an indictment then depending against him the said C. D. for an assault upon one E. F. and that it then and there became and was a material question upon the trial of the said indictment, whether, &c. and that A. B. late of, &c. labourer, did then and there take his corporal oath before the said court, upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, concerning the matter then depending, (the said court then and there having competent power and authority to administer the said oath to the said A. B.) and that the said A. B. being duly sworn as aforesaid, wickedly devising and intending to pervert the due course of law and justice, and to cause the said C. D. to be unjustly convicted of the trespass and assault so charged against him as aforesaid, in and by the said indictment, did then, to wit, on, &c. before the said court, to wit, at, &c. falsely, knowingly, wickedly, wilfully, and corruptly, by his own act and consent, say, depose, and give in evidence to the jurors of the jury then and there duly sworn and taken between our said lord the king and the said C. D. that on, &c. (*here set out so much of the evidence as can be proved to be false, and the averments to falsify:*) and so the jurors aforesaid now here sworn, upon their oath aforesaid, do say, that the said A. B. at and upon the said trial, to wit, on, &c. before the said court then and there having sufficient and competent power and authority as aforesaid, did, in manner and form aforesaid, commit wilful and corrupt perjury, against the peace, &c.

• 147. *Indictment for perjury by a woman before two justices, on the filiation of a child.*

That A. B. late of, &c. single woman, on, &c. at, &c. being pregnant (a), was delivered of a male child, which by the laws of this realm was born a bastard, and that the said A. B. afterwards, to wit, on, &c. at, &c. came in her own proper person before J. H. esq. and G. H. esq. then being two of the justices of our said lord the king, as-

(a) If the filiation took place pregnant with a child likely to be born a bastard, before the birth, allege "being

signed to keep the peace of our said lord the king within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; and did then and there, before the said justices, charge one E. F. of the parish aforesaid, with having lately before that time begotten upon the body of her the said A. B. (b) a certain male child, which was afterwards born alive of the body of her the said A. B. a bastard; and that she the said A. B. was then and there before the said justices duly sworn, and did take her corporal oath upon the holy gospel of God concerning the said premises (they the said justices, and each of them, then and there having sufficient and competent power and authority to administer the said oath to the said A. B.); and that the said A. B. being so sworn as aforesaid, wickedly and maliciously devising and intending falsely and unjustly to charge and burthen the said E. F. with the maintenance and support of the said bastard child, and not only to draw him into great charges and expense of his monies, but also to bring him into great scandal, infamy, and disgrace, as a lewd and unchaste person, then and there, upon her oath aforesaid, in a certain examination before the said justices, taken in writing in that behalf, did falsely, maliciously, wilfully, wickedly, and corruptly say, depose, and swear (amongst other things) in substance and to the effect following, that is to say, (*set out as much of the examination as can be proved to be false, and the averments to falsify:*) and so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. on, &c. at, &c. before the said J. H. and G. H. the justices as aforesaid (so as aforesaid having sufficient and competent power and authority to administer the said oath to the said A. B.) falsely, maliciously, wickedly, wilfully, and corruptly, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great damage of the said E. F. and against the peace, &c.

148. *Indictment for perjury in an answer before one of the barons of the Exchequer.*

That one O. G. late of, &c. mariner, on, &c. did exhibit

(b) If before the birth, say she was then pregnant as "the said child with which aforesaid."

bit his English bill of complaint in writing in the court of our said lord the now king of his Exchequer (the said court then and still being at Westminster, in the said county of M.) against one T. S. late of Grub-street, in the parish of St. Giles, Cripplegate, London, merchant, and one J. H. late of the same place, linen-draper, directed to the right honourable W. P. chancellor and under-treasurer of his majesty's Court of Exchequer, at Westminster; the honourable Sir J. S. knight, lord chief baron of the same court; and to the rest of the barons there, for the purpose, and praying (amongst other things) that *(set out as much of the bill as will explain the meaning of that part of the defendant's answer which is to be set out, and on which perjury is assignable,)* as in and by the said bill of complaint of the said O. G. remaining filed as of record in the said Court of Exchequer, at Westminster aforesaid, in the said county of M. (amongst other things) more fully appears. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said T. S. afterwards, to wit, on, &c. at the parish of St. George, Bloomsbury, in the said county of M. came in his own proper person before Sir B. H. knight, then being one of the barons of his majesty's said Court of Exchequer, at Westminster, and then and there before the said Sir B. H. exhibited and produced the answer in writing of him the said T. S. and of the said J. H. to the aforesaid bill of complaint of the said O. G. intitled, "the joint and several answer of T. S. and J. H. gentlemen, the defendants to the bill of complaint of O. G. complainant;" and that the said T. S. being then and there sworn in due form of law upon the holy gospel of God, before the said Sir B. H. knight, then being one of the said barons of the said Court of Exchequer, at Westminster aforesaid, (and then and there having sufficient and competent power and authority to administer an oath to the said T. S. in that behalf,) he the said T. S. did, upon his corporal oath concerning the matters contained in the said answer before the said Sir B. H. knight, then and there being such baron as aforesaid, then and there swear, that so much of the said answer of him the said T. S. so as aforesaid produced and exhibited before the said Sir B. H. as concerned the act and deed of him the said T. S. he the said T. S. knew to be true; and that so much of the said answer of him the said T. S. as concerned the act and deed of any other person, he the said



T. S. believed to be true; and that the said T. S. contriving and intending unjustly to aggrieve the said O. G. the complainant aforesaid, did then and there, upon his oath aforesaid, in his answer aforesaid, before the said Sir B. H. knight, then and there being such baron as aforesaid (and having such sufficient and competent power and authority as aforesaid,) knowingly, falsely, wickedly, maliciously, wilfully, and corruptly, by his own act and consent (amongst other things,) answer, swear, and affirm in writing as follows, that is to say, (*set out the part on which perjury is assignable, the proper averments to falsify, and conclude as in pr. 147.*)

149. *Against a witness for perjury on a trial in C. B. in an action of trespass and assault.*

That on, &c. a certain cause in which C. D. was the plaintiff and E. F. the defendant, in due manner and form came on to be tried before Sir G. H. knt. then and still being chief justice of our said lord the king of the Common Pleas, at Westminster, in the parish of St. Margaret, within the liberty of Westminster, in the county of Middlesex, in the great hall of pleas there, by a certain jury then and there duly impanelled, sworn, and charged to try the said cause; upon which said trial one A. B. late of, &c. labourer, was then and there produced as a witness on the part of the said defendant in the said cause, and then and there before the aforesaid chief justice, and the said jury, was sworn upon the Holy Evangelists to speak the truth, the whole truth, and nothing but the truth, of and in the matters then and there depending, the said Sir G. H. chief justice as aforesaid, then and there having sufficient and competent power and authority to administer an oath to the said A. B. in that behalf; and that the said A. B. then and there falsely, maliciously, voluntarily, and corruptly, said, deposed, and gave in evidence to the said jury that, (*set out the matter sworn, falsify, and conclude as in pr. 144.*)

150. *For perjury in giving evidence upon the trial of an information at nisi prius.*

That on, &c. at the sittings of nisi prius holden in the court of our said lord the now king of his exchequer, in the parish of St. Margaret, within the liberty of West-

minster, in the county of Middlesex, before Sir C. D. knight, lord chief baron of our said lord the king, of his Court of Exchequer, at Westminster aforesaid, a certain issue before then duly joined upon an information before then exhibited by E. F. esq. his said majesty's attorney-general, who prosecuted for our said lord the king in that behalf against G. H. came on to be tried and was tried in due form of law, by a jury of the said county duly sworn between our said lord the king and the said G. H.; and that upon the said trial of the said information, A. B. late of, &c. labourer, did then and there appear as a witness for and on behalf of our said sovereign lord the king. (*Allege the taking of the oath, the competency of the court, the matter sworn, its falsity, and conclude as in pr. 146.*)

*151. Indictment for perjury, in an affidavit for debt, before a commissioner in the country, authorized to take affidavits respecting matters in K. B.*

That A. B. late of, &c. yeoman, being an evil-disposed person, and wickedly contriving and intending to aggrrieve, injure, and prejudice one C. D. and to cause the sum of twenty pounds to be indorsed upon a certain process issuing out of the court of our said lord the king, before the king himself, called a *latitat*, with intention to cause and procure the said C. D. to be arrested, to appear in the same court, at the suit of the said A. B. and also with an intent that the said C. D. should be compelled to find bail for the said sum of twenty pounds, according to the form of the statute in such case made and provided, he the said A. B. on, &c. at, &c. came in his proper person before E. F. gentleman, then being a commissioner duly authorized and empowered to take and receive affidavits in, touching, and concerning matters and proceedings of or in the court of our said lord the king, before the king himself, to wit, on, &c. at, &c. and that the said A. B. then and there, to wit, on, &c. at, &c. was duly sworn, and did take his corporal oath, upon the holy gospel of God, before the said E. F. (he the said E. F. then and there having sufficient and competent power and authority to administer the said oath to the said A. B. in that behalf;) and that the said A. B. being so sworn as aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did then and there, before the said E. F. as such commissioner as

aforesaid, depose, swear (c), and make affidavit in writing (amongst other things) in substance and to the effect following, that is to say, that C. D. (meaning the said C. D. before mentioned), of M. in the county of K. was justly and truly indebted unto him the said A. B. in the sum of twenty pounds of lawful money, for money lent and advanced, as by the same affidavit (d), affiled in the said court of our said lord the king, before the king himself, the said court then and still being at W. aforesaid, (amongst other things) more fully appears; whereas, in truth and in fact, he the said C. D. in the said affidavit named, was not, at the time of making the said affidavit, or at any other time, indebted unto him the said A. B. in the aforesaid sum of twenty pounds, in the said affidavit mentioned, for money lent and advanced, or upon any account whatsoever; and whereas, in truth and in fact, the said C. D. was not, at the time of making the said affidavit, or at any other time, indebted unto him the said A. B. in any sum of money whatsoever: and so, (*Conclude as in pr. 145.*)

152. *Indictment for perjury at the trial of an issue at bar, directed out of the Court of Chancery, touching the capability of a person to make his will.*

That heretofore, to wit, on Saturday next after three weeks from the day of Easter, in Easter term, in the ——— year of the reign, &c. in the court of our said lord the king, before the king himself, (the said court then and still being at Westminster, in the said county of Middlesex) a certain issue directed by the present lord high chancellor of Great Britain, in due manner joined, touching and concerning the validity of a certain will and codicil of one W. B. deceased, in which said issue B. L. esq. was the plaintiff, and E. Y. esq. the defendant, in due manner came on to be tried, and was then and there tried, in due form of law, by a certain jury of the country, in that behalf duly sworn and taken between the said parties: and the jurors aforesaid now here sworn, upon their oath aforesaid, do further present, that upon the trial of the said issue it then and there became and was made a material question between the said parties, whether the said W. B. at the time of signing, sealing, and

(c) See p. 112.

(d) See p. 112. n. (g).

publishing the said will, was of such sound and disposing mind as to be capable of making a will or not: and the jurors aforesaid now here sworn, upon their oath aforesaid, do further present, that A. B. late of, &c. yeoman. (*state the taking of the oath, the matter sworn, assign the perjury, and conclude as in pr. 146.*)

*153. Indictment for perjury on the trial of an issue, in an action of assumpsit, at the sittings after term, in the King's Bench.*

That at the sittings of nisi prius, holden after the term of St. Hilary, on, &c. at Westminster, in the county of Middlesex, in the great hall of pleas there, called Westminster Hall, before William earl of Mansfield, then being chief justice of our said lord the king, assigned to hold the pleas in the court of our said lord the king, before the king himself, a certain cause\* in which C. D. was the plaintiff and E. F. the defendant, came on to be tried in due form of law, and was then and there tried, by a certain jury of the country in that behalf duly sworn and taken, between the parties aforesaid. And the jurors aforesaid, now here sworn, upon their oath aforesaid, do further present, that upon the trial of the said issue so joined between the parties aforesaid, A. B. late of, &c. yeoman, appeared as a witness for and on behalf of the said C. D. the plaintiff in the cause above mentioned, and was sworn, and then and there took his corporal oath, upon the holy gospel of God, before the said Earl of Mansfield, chief justice as aforesaid, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters then in question in the said cause, (he the said Earl of Mansfield, chief justice as aforesaid, then and there having sufficient and competent power and authority to administer an oath to the said A. B. in that behalf.) And the jurors aforesaid now here sworn, upon their oath aforesaid, do further present, that, upon the trial of the said cause, certain questions then and there became and were material, that is to say, whether, &c. (*set out such as are sworn to, and upon the answer to which perjury is to be assigned;*) and that the said A. B. being so sworn as aforesaid, falsely, wickedly, wilfully, corruptly, and maliciously contriving and intending, as much as in him lay, to prevent justice, and pervert the due course of law, and to procure a verdict to pass against

the said E. F. on the trial of the said cause, and thereby to subject him the said E. F. to the payment of sundry heavy costs, charges, and expenses, then and there, to wit, on, &c. at, &c. falsely, wickedly, wilfully, maliciously, and corruptly, and by his own act and consent, did say, depose, swear, and give evidence, (amongst other things) to and before the said jurors, so sworn to try the said issue as aforesaid, and the said Earl of Mansfield, the chief justice as aforesaid, in substance and to the effect following, that is to say, (*set out the matter sworn to upon which perjury is assignable, assign the perjury, and conclude as in pr. 146.*)

154. *Indictment for perjury, in giving evidence at the assizes, upon the trial of a cause.*

That at the assizes holden for the county of ———, on, &c. at, &c. before A. B. esquire, being one of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, and Sir C. D. knight (e), “one of the justices of our said lord the king of his Court of Common Pleas at Westminster,” justices of our said lord the king, assigned to take the assizes in the said county, a certain cause, (*proceed as in pr. 153 from the \*.*)

155. *Indictment for perjury by a justice of the peace, in an affidavit before a judge of the court of King's Bench, upon shewing cause why a rule should not be made absolute for leave to file a criminal information against him.*

That on, &c. (f) in the court of our said lord the king, before the king himself, (the same court then and still being at Westminster, in the county of Middlesex,) a rule of the said court was made, whereby, upon reading the several affidavits of J. B. of the borough of A, in the county of B. innkeeper, and J. P. of the same place, victualler, it was ordered, That Saturday next after the oc-

(e) If one of the barons of the Exchequer, say, “one of the barons of the Exchequer of our said lord the king,” Lil. Ent. 257.  
(f) As in the rule.

tave of St. Martin should be given to W. H. esquire, to shew cause why an information should not be exhibited against him for certain misdemeanors, upon notice of that rule to be given to him in the mean time; and that afterwards, to wit, on Monday next after the octave of St. Martin, in the year aforesaid, at W. aforesaid, the said rule of court was enlarged by another rule of the same court there made, whereby, amongst other things, it was by the said court ordered, That the second day of the then next term should be peremptorily further given to the said W. H. to shew cause why an information should not be exhibited against him for certain misdemeanors (upon the undertaking in the same last-mentioned rule expressed); in and by one of which said affidavits, whereon the said original rule was grounded, to wit, the affidavit of the said J. B. it was sworn and alleged, (amongst other things) in substance and to the effect following, to wit, *(set out so much of the affidavits as explains that part of the defendant's affidavit which is to be set out, and upon which perjury is assignable.)* And the jurors aforesaid, upon their oath aforesaid, do further present, That the said W. H. late of, &c. having due notice of the said original rule, and the said other rule of court above mentioned respectively, minding and wickedly imagining, devising, and intending, by falsehood and wicked means, to procure the same first rule to be discharged and set aside, and to prevent justice and pervert the due course of law, and also to vex, harrass, aggrieve, and oppress the said J. B. and J. P. afterwards, to wit, on, &c. at, &c. in the said county of Middlesex, in his proper person, before Sir J. Y. knight, then and yet being one of the justices of our said lord the king, assigned to hold pleas in the said court of our lord the king, before the king himself, was duly sworn, and did take his corporal oath, upon the holy gospel of God, touching and concerning the matter of the said original rule then depending against him the said W. H. (he the said Sir J. Y. then and there having sufficient and competent power and authority to administer an oath to the said W. H. in that behalf); and that the said W. H. then and there, to wit, on, &c. at, &c. upon his oath aforesaid, before the said Sir J. Y. the justice aforesaid, did falsely, maliciously, wickedly, wilfully, and corruptly say, depose, swear, and make affidavit in writing, (amongst other things) in substance and to the effect following, that is to say, that,

(set out such part of his affidavit as can be (c) contradicted, assign the perjury, and conclude as in pr. 147.)

156. *Indictment for perjury in an answer sworn before a master in Chancery.*

That M. F. late of, &c. did exhibit her English bill of complaint, in writing, in the Court of Chancery of our said lord the king, (the same court then and still being at Westminster, in the said county of Middlesex,) against one A. B. directed to the Right Honourable A. Lord B. baron of C. lord high chancellor of Great Britain; whereupon the said M. F. by her said bill of complaint, did pray, (amongst other things) that the said A. B. might (so much of the bill should be set out as will explain the meaning of the defendant's answer, without introducing new matter by way of innuendos, *see* p. 109.) \*as in and by the said bill of complaint of her the said M. F. remaining filed as of record in the said Court of Chancery, at Westminster aforesaid, in the said county of Middlesex, (amongst other things) more fully appears. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said A. B. the defendant named in the said bill of complaint of the said M. F. afterwards, to wit, on, &c. at, &c. (d), came in his own proper person before A. A. esquire, then being one of the masters of the said Court of Chancery, and then and there before the said A. A. esquire, exhibited and produced the answer in writing of him the said A. B. to the aforesaid bill of complaint of her the said M. F. intituled, "The answer of A. B. brewer, the defendant to the bill of complaint of M. F. widow, complainant;" and that the said A. B. then and there in due form of law was sworn, and did take his corporal oath, upon the holy gospel of God, before the said A. A. esquire, then being one of the said masters of the said Court of Chancery, (and then and there having sufficient and competent power and authority to administer an oath to the said A. B. in that behalf;) and that the said A. B. being so sworn as aforesaid, did, upon

(c) It is not necessary to aver, that any use was made of the affidavit, see p. 112. (g). (d) The place is not material. See p. 61. Holt. R. 534.

his corporal oath, concerning the matters contained in the said answer, before the said A. A. then as aforesaid being one of the said masters of the said Court of Chancery, then and there swear, that so much of the said answer of him the said A. B. so as aforesaid produced and exhibited before the said A. A. as concerned the act and deed of him the said A. B. he the said A. B. knew to be true; and that so much of the said answer of him the said A. B. as concerned the act and deed of any other person, he the said A. B. *believed* (e) to be true; and that the said A. B. minding and intending unjustly to aggrieve the said M. F. the complainant aforesaid, did then and there, upon his oath aforesaid, in his answer aforesaid, before the said A. A. then and there being one of the said masters of the said Court of Chancery as aforesaid, (and having such sufficient and competent power and authority as aforesaid,) falsely, knowingly, wickedly, maliciously, wilfully, and corruptly, by his own act and consent, answer, swear, and affirm in writing, (amongst other things) in substance and to the effect following, that is to say, that, (*set out so much of the answer as can be contradicted, allege a prout patet, as before; from the \*; falsify and conclude as in pr. 148.*)

157. *Indictment for perjury in an affidavit made in the Court of King's Bench, in order to support a motion for a criminal information* (f).

That C. A. late of, &c. esquire, contriving and intending to aggrieve and injure one W. B. on, &c. in order to obtain a rule of the court of our said lord the king, before the king himself, against the said W. B. whereby it might be ordered by the said court, that a day should be given to the said W. B. to shew cause why an information should not be exhibited against him the said W. B. for

(e) A man may be indicted for perjury in swearing that he *believes* a matter to be true, which he knows to be false. Pedley's case, Leach, 277.

(f) R. v. Atkinson. See the original indictment, C.C.C.

365. which is too long, and too much involved in its own particular circumstances, to be introduced here at length; the formal part only, abstracted from the particular facts, may be of more general use.



certain misdemeanors, in publishing certain supposed scandalous libels concerning the said C. A. did come in his the said C. A.'s proper person into the said court of our said lord the king, before the king himself, (the said court then and still being at Westminster aforesaid, in the county of Middlesex aforesaid,) and did then and there produce to the said court a certain affidavit in writing of him the said C. A. to be exhibited to the said court for the purpose aforesaid, and then and there, before the same court, was duly sworn, and took his corporal oath upon the holy gospel of God, concerning the truth of the matters contained in the said affidavit, (the same court then and there having a lawful and competent authority to administer the same oath to the said C. A. and to take and receive the said affidavit of the said C. A.); and that the said C. A. being so sworn as aforesaid, did then and there, to wit, on, &c. at, &c. in the said county of Middlesex, in and by his affidavit aforesaid, upon his oath aforesaid, before the said court, (the said court then and there having a lawful and competent authority to administer the said oath to the said C. A. and to receive his said affidavit,) falsely, corruptly, knowingly, wilfully, and maliciously depose and swear (among other things) as follows, that is to say, (*alleging the matter sworn, the falsification, and the conclusion, as in pr. 147.*)

158. *Against a witness for perjury committed on the trial of a felon at the quarter sessions.*

That at the general quarter sessions of the peace of our lord the now king, holden at Pontefract, in and for the west riding of the county of York, on, &c. before — justices of our said lord the king, assigned to keep the peace of our said lord the king in the west riding of the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors, committed within the riding aforesaid, one C. D. was in due form of law tried upon an indictment then and there depending against him for felony, to wit, grand larciny; and that A. B. late of, &c. labourer, did then and there take his corporal oath, before the said justices, upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, concerning the matter then depending, the said justices then and there having competent power and authority to

administer the said oath to the said A. B.; and that it then and there became and was a material question upon the trial of the said C. D. whether he the said A. B. did or did not, on, &c. for and on the behalf of the said C. D. offer to one E. F. the prosecutor of the said indictment, the sum of 10s. to make up the said prosecution, and that the said A. B. being duly sworn as aforesaid, did then and there falsely, corruptly, wilfully, and maliciously say, depose, and give in evidence before the said justices, that he the said A. B. did not on the — day of —, for and on the behalf of the said C. D. offer to give the sum of —l. to the said E. F. to make up the prosecution for the said felony with which the said C. D. was so charged as aforesaid; whereas in truth and in fact the said A. B. did, on the said — day of —, at S. aforesaid, offer on behalf of the said C. D. to give the sum of 10s. to the said E. F. to make up the prosecution for the said felony. And so the jurors aforesaid now here sworn and charged to inquire for our said lord the king, for the body of the said county, upon their oath aforesaid, do say, that the said A. B. at the said general quarter sessions of the peace, so holden at Pontefract aforesaid, in and for the said west riding of the county aforesaid, before the said justices, did, in manner and form aforesaid, commit wilful and corrupt perjury, against the peace, &c.

*159. For perjury in a deposition, in the Ecclesiastical Court, in a suit for defamation.*

That A. B. the wife of C. D. late of, &c. on, &c. at, &c. in her own proper person, came before E. F. then and still being surrogate in the archdeaconry court of the diocese of Exeter, and was then and there sworn as a witness on the part and behalf of one G. H. the promovent or plaintiff in a certain action or suit then depending in the said court, in which the said G. H. was promovent or plaintiff and one I. K. was the defendant; and that the said A. B. was then and there sworn, and did then and there take his corporal oath, upon the holy Gospel of God, before the said E. F. being such surrogate as aforesaid, to speak the truth, touching and concerning the several matters contained in a certain libel before then exhibited in the said suit or action, he the said E. F. surrogate as aforesaid, then and there having sufficient and com-

petent power and authority to administer the said oath to the said A. B.; and that the said A. B. being so sworn as aforesaid, wilfully and maliciously devising, contriving, and intending to draw down the censures of the Ecclesiastical Court upon the said I. K. and to cause him to be excommunicated and to be put to great costs and charges, and to cause him to suffer other the pains and penalties by the said court inflicted on persons guilty of defamation, then and there did, falsely, knowingly, wilfully, wickedly, maliciously, and corruptly, by her own act and consent, depose, repeat, and acknowledge (*set out so much of the matter sworn to as can be contradicted, with averments to falsify, and conclude as in pr. 145.*)

160. *Indictment for taking a false oath in order to obtain administration to a seaman, under stat. 31 G. 2. c. 10. s. 24 (h).*

That A. B. late of, &c. labourer, well knowing that one C. D. deceased, had served our said lord the king as a seaman on board his majesty's ship ———, being in his majesty's service, and that certain wages and pay were due to him for such service, on, &c. at, &c. came before the worshipful J. H. then surrogate to the right worshipful P. C. doctor of laws, and unlawfully, wilfully, knowingly, and feloniously, did take a false oath before the said J. H. (the said J. H. then and there having competent power and authority to administer an oath,) that the said C. D. was then dead, and that he the said A. B. was his brother, and next of kin, whereas in truth and in fact the said A. B. was not the brother of the said C. D. with intent to obtain letters of administration, in order to receive the wages and pay, due and owing to the said C. D. on account of his said service, against the form of the statute,

(h) By this stat. it is enacted, that whosoever willingly and knowingly takes a false oath to obtain the probate of any will or wills, or to obtain letters of administration in order to receive the payment of any wages, pay, or other allowances of money or prize-money due,

or that were supposed to be due, to any officer, seaman, or other person who has really served, or who was supposed to have served, on board any ship or vessel in the king's service, shall be guilty of felony without benefit of clergy."

&c. and against the peace, &c. (2d count stating that he, supposing wages due, &c.)

161. *Indictment for suborning a woman to swear a bastard child to an innocent person.*

That A. B. late of, &c. labourer, being a wicked and evil-disposed person, and minding and intending great injury to one B. R. of the said parish, and unjustly to cause and procure him to be put to great charges and expense of his monies, and to give security for the maintenance of a child, of which one A. U. spinster, was, on, &c. pregnant, and which, by the laws of this realm, was likely to be born a bastard, and to be chargeable to the said parish, did, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully and wickedly solicit, instigate, persuade, and procure the said A. U. to go before one of the justices of our said lord the king, assigned to keep the peace of our said lord the king, within the said county of B. and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, and then and there take her corporal oath and swear, before such justice, that the said B. R. was the father of such child; and that she the said A. U. did, in consequence of such solicitation, instigation, and persuasion, on, &c. at, &c. (*allege the filiation, &c. as in pr. 147.*) whereas, in truth and in fact, he the said A. B. at the time when he so endeavoured to persuade, solicit, and instigate the said A. U. to make oath and swear as aforesaid, then and there, to wit, on &c. at, &c. well knew that the said B. R. would be put to great charges and expense of his monies, if she the said A. U. should swear as aforesaid; and whereas, in truth and in fact, he the said A. B. at the said time when he so endeavoured to persuade, solicit, and instigate the said A. U. to make oath and swear as aforesaid, had no reasonable or probable cause whatsoever to suspect or imagine that the said B. R. was the father of such child, but, on the contrary thereof, the said A. B. was then and there informed by the said A. U. that he the said A. B. was the father of such child of which she the said A. U. was so pregnant as aforesaid; and whereas, in truth and in fact, she the said A. U. never told or informed him the said A. B. that the said B. R. was the father of such child; and whereas, in truth and in fact, he the said A. B.

so wickedly and unlawfully endeavoured to persuade, solicit, and instigate the said A. U. to swear as aforesaid, in order that he the said A. B. might be exonerated, freed, and discharged from divers expenses which might accrue to him, as being the father of such child, after the same should be born of the body of her the said A. U. against the peace, &c.

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## FRAUDS RELATING TO THE COIN.

### 162. *Indictment for coining copper money.*

(Commencement as in *pr.* 1.) Three pieces of false, feigned, and counterfeit copper money, each and every of them made and counterfeited to the likeness and similitude of a piece of good, legal, and current copper money of this realm, called a halfpenny, then and there, unlawfully and feloniously did make, coin, and counterfeit, against the form of the statute, &c. and against the peace, &c. (*i*).

### 163. *Indictment for putting off false copper money at a lower rate than its denomination imports.*

400 pieces of false and counterfeit copper money, each and every of them made and counterfeited to the likeness and similitude of the good, legal, and current money and copper coin of this realm, called an halfpenny, the same counterfeited pieces of copper money not being (*k*) then

(*i*) By the stat. 11 G. 3. c. 40. if any person shall make, coin, or counterfeit, any of the copper monies of this realm, commonly called an halfpenny or a farthing, such person, and his counsellors, aiders, and procurers, shall be adjudged to be guilty of felony.

By s. 2. to sell, take, receive, pay, or put off, any counterfeit copper money, not melt-

ed down or cut in pieces, at or for a lower rate or value than the same by its denomination doth import, or was counterfeited for, is felony.

To counterfeit foreign copper money, &c. is a misdemeanor, and punishable with six months imprisonment, under the stat. 43 G. 3. c. 139. s. 3.

(*k*) See Palmer's case, p. 161. Leach, 120.

melted down or cut in pieces, then and there unlawfully and feloniously did *sell*, *pay*, and *put off* to one C. D. at a lower rate and value than the same counterfeited pieces of copper money did by their denomination import and were counterfeited for, that is to say, for one piece of current gold coin of this realm, called *an half-guinea*, being of the value of ten shillings and sixpence, against the form, &c. and against the peace, &c.

164. *Indictment for putting off counterfeit silver money (l).*

That I. A. late of, &c. labourer, and E. A. late of the same place, wife of the said I. A. on, &c. with force and arms, at, &c. ten pieces of false and counterfeit milled money and coin, each and every of them made and counterfeited to the likeness and similitude of a piece of good, legal, and current milled money and silver coin of this realm called a sixpence, the same counterfeited pieces of milled money, nor either of them not being then cut in

(l) By the stat. 8 & 9 W. 3. c. 26. s. 6. whoever shall take, receive, *pay*, or *put off*\*, any counterfeit milled money†, or any milled‡ money whatsoever, unlawfully diminished, and not cut in pieces, at or for a lower rate or value than the same by its denomination doth or shall import, or was coined or counterfeited for, shall be guilty of felony§. By the 7th sec. corruption of blood is saved. By sec. 9. the prosecution must be commenced within 3 months after the commission of the offence||.

\* These words denote an actual passing of the money, and would not be satisfied by proof of a mere tender, or an attempt to get rid of the money, which has not been accomplished. Woolridge's case, Leach, 251. East. P. C. 179.

† This statute is confined to gold and silver coin; with respect to copper coin, see the stat. 11 G. 3. c. 40. s. 2.

‡ Milling signifies the process of passing the metal through a mill or press, so as to form it into a plate of proper thickness to be cut out into pieces for stamping. All the money now current is milled, (see East. P. C. 183. 9 W. 3. c. 2.) and so called in order to distinguish it from hammered money. It is unnecessary to prove that the counterfeit money was actually milled; it is sufficient, if it resemble the genuine milled money. R. v. Bunning, Leach, 708. East. P. C. 183. R. v. Dorington. R. v. Lazarus, ib.

§ The punishment is burning in the hand, and imprisonment for a year, under the stat. 18 Eliz. c. 7. s. 3.

|| The information and proceeding before the magistrate are deemed the commencement under this clause. R. v. Wallace, East. P. C. 168.

pieces, then and there, unlawfully and feloniously did put off, to one *Mary Hulme* (m), *spinster*, and one *Peggy Nichols*, *spinster*, at a lower rate and value than the same counterfeited pieces of milled money did by their denomination import and were counterfeited for, (that is to say) the sum of 2s. against the form of the statute, &c. and against the peace, &c.

2nd count charges the prisoners with putting off the same counterfeit coin to the said *Mary Hulme*.

3rd count charges the prisoners with putting off the same counterfeit coin to the said *Peggy Nichols*.

165. *For putting off counterfeit silver, having at the same time counterfeit silver in possession* (n).

That Jane, the wife of James Hodgson, late of the parish

(m) A woman was convicted at the O. B. Mich. 1702. for putting off counterfeit money to divers persons *unknown*; but Lord Holt said, that the names of the persons ought to be mentioned and laid severally. East. P. C. 180.

(n) By the stat. 8 & 9 W. 3. c. 26. s. 3. made perpetual by stat. 7 Ann. c. 23. to colour, gild, or case over\*, with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin resembling the current coin, or any round blanks of base metal, or of coarse gold or silver, of a fit size and figure to be coined, or shall gild over any silver blanks of a size and figure resembling the current gold coin, is treason.

By s. 6. persons blanching copper for sale, or mixing blanching copper with silver, &c. or taking or paying counterfeit milled money, &c. are guilty of felony, and shall suffer death.

By s. 7. attainder by this act not to make corruption of blood. Ibid. By what evidence offenders may be convicted.

By stat. 15 Geo. 2. c. 28.† if any person shall wash, gild, or colour any lawful silver coin called a shilling or a sixpence, or any counterfeit or false shilling or sixpence, or add to or alter the impression, or any part of the impression, of either side of any such lawful or counterfeit shilling or sixpence, with intent to make such shilling resemble, or look like, or

\* To extract latent silver from the body of base metal by means of aqua fortis, is an offence within these words. *R. v. Lavey and Parker*, Leach, 182.

† This statute is confined to the gold and silver coin of the realm, and does not extend to copper money. *Cirwan's case*, East. P. C. 182.

of Whalley, in the county of Lancaster, labourer, on, &c. with force and arms, at, &c. one piece of false and counterfeit money, made and counterfeited to the likeness and si-

pass for a piece of lawful gold coin called a guinea; or with intent to make such sixpence resemble, or look like, or pass for a piece of lawful gold coin called a half-guinea; or shall file or any ways alter, wash, or colour any of the brass monies called halfpennies or farthings, or add to or alter the impression, or any part of the impression, of either side of a halfpenny or farthing, with intent to make a halfpenny resemble or look like, or pass for a lawful shilling, or with intent to make a farthing resemble or look like, or pass for a lawful sixpence, the person or persons so offending in any of the matters aforesaid, their counsellors, aiders, abettors, and procurers, shall be adjudged to be guilty of high treason.

s. 2. And if any person shall utter or tender in payment any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall be thereof convicted, such person so offending shall suffer six months imprisonment, and find sureties for his or her good behaviour for six months more, to be computed from the end of the said first six months; and if the same person shall afterwards be convicted a second time of the like offence of uttering or tendering in payment

any false or counterfeit money, knowing the same to be so, such person shall, for such second offence, suffer two years imprisonment, and find sureties for his or her good behaviour for two years more, to be computed from the end of the said first two years; and if the same person shall afterwards offend a third time in uttering or tendering in payment any false or counterfeit money, knowing the same to be so, and shall be convicted of such third offence, he or she shall be adjudged to be guilty of felony, without benefit of clergy.

s. 3. And if any person shall utter, or tender in payment, any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall, *either on the same day, or within the space of ten days then next, utter or tender in payment any more*, or other false or counterfeit money, knowing the same to be false or counterfeit, to the same person or persons, or to any other person or persons, or shall, at the time of such uttering or tendering, *have about him or her, in his or her custody, one or more piece or pieces of counterfeit money*, besides what was so uttered or tendered, then such person, so uttering or tendering the same, *shall be deemed and taken to be*



multitude of a piece of good, lawful, and current money and silver coin of this realm, called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm, called a shilling, unlawfully, unjustly, and

*a common utterer of false money, and being thereof convicted, shall suffer a year's imprisonment, and shall find sureties for his or her good behaviour for two years more, to be computed from the end of the said year; and if any person having been once so convicted as a common utterer of false money, shall afterwards again utter or tender in payment any false or counterfeit money, to any person or persons, knowing the same to be false or counterfeit, then such person being thereof convicted, shall for such second offence be adjudged to be guilty of felony, without benefit of clergy.*

s. 4. And that the person or persons convicted of any of the treasons and felonies respectively hereinbefore mentioned, shall suffer death; as in case of high treason and felony respectively; but the blood of the heirs of such offender shall not be thereby corrupted, nor shall his wife thereby lose her dower.

s. 5. And that the person and persons that shall be guilty of any of the treasons, felonies, or crimes aforesaid, shall be indicted, arraigned, tried, and convicted by such like evidence, and in such manner as is now used and allowed against any offenders for counterfeit-

ing the lawful coin, provided that there shall be no prosecutions for any of the offences made treason or felony by this act, unless such prosecution be commenced within six months next after such offence shall be committed.

s. 8. Whoever, being out of prison, shall commit any of the offences aforesaid, and shall afterwards discover two or more persons who shall have committed any of the said offences, so as such two or more persons shall be thereof convicted, such discoverers shall have his majesty's pardon.

s. 9. If any person shall be convicted of uttering or tendering any false or counterfeit money as aforesaid, and shall afterwards be guilty of the like offence in any other county or city, the clerk of the assize, or clerk of the peace for the county or city where such first conviction was so had, shall, at the request of the prosecutor, or any other on his majesty's behalf, certify the same by a transcript in few words, containing the effect and tenor of such conviction; for which certificate two shillings and sixpence, and no more, shall be paid; and such certificate, being produced in court, shall be sufficient proof of such former conviction.

deceitfully, did utter (o) to one M. N. spinster, she the said I. H. at the time when she so uttered the said piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit; and that she the said I. H. at the time when she so uttered the said piece of false and counterfeit money as aforesaid, (to wit,) on, &c. at, &c. had about her the said I. H. in the custody and possession of her the said I. H. one other piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm, called a shilling, she the said I. H. then and there well knowing the said last-mentioned piece of false and counterfeit money to be false and counterfeit, against the form of the stat. (p) &c. and against the peace, &c.

166. *For uttering a counterfeit shilling, having before been convicted as a common utterer, &c. of counterfeit money.*

*Lancashire, to wit.* That heretofore, to wit, at the assizes and general session of our sovereign lord the king of oyer and terminer and general gaol delivery, held at the Castle of Lancaster, in and for the county palatine of Lancaster, on Tuesday the 26th day of March, in the 45th year of the reign of our sovereign lord George the third, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith, before his majesty's well-beloved and faithful counsellor Edward Lord Ellenborough, chief justice of our said sovereign lord the king of his majesty's Court of King's Bench, at

(o) This is sufficient, without proceeding to aver a tender in payment, since the stat. is in the disjunctive. *R. v. Franks*, Leach, 736.

(p) This indictment is founded on the stat. 15 G. 2. c. 28. s. 3. and in order to subject the offender to the punishment imposed by the third section, it is not necessary to allege that the defendant is a common utterer of false money,

since this is a conclusion of law which arises upon the facts stated. *Scott's case*, Leach, 1001. *Smith's case*, 2 Bos. & Pull. 127. But it is not sufficient, in an indictment on this section, to allege two utterings on the same day in different counts, they must both be alleged in the same count. *R. v. Tandy*, Leach, 970. *East*, P. C. 182.

Westminster, and his majesty's trusty and well-beloved Sir Robert Graham, knight, one of the barons of our said sovereign lord the king, of his majesty's Court of Exchequer, at Westminster, and others their companions, justices and commissioners of our said sovereign lord the king, by virtue of letters patent of our said sovereign lord the king, I. H. by the name and description of I. H. late of the parish of Blackburn, in the county of Lancaster, labourer, was in due form of law tried and convicted by a certain jury of the country, duly taken and sworn, between our said lord the king and the said I. H. in that behalf, upon a certain indictment then and there depending against him the said I. H.; for that he the said I. H. on the 19th day of August, in the 44th year of the reign of our sovereign lord George the third, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, at the parish aforesaid, in the county aforesaid, one piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm called a shilling, unlawfully, unjustly, and deceitfully, did utter to one R. W. he the said I. H. at the time when he so uttered the said piece of false and counterfeited money, then and there well knowing the same to be false and counterfeit; and that he the said I. H. afterwards, to wit, on the same 19th day of August, in the 44th year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, one other piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm called a shilling, unlawfully, unjustly, and deceitfully did utter to one R. B. he the said I. H. at the time when he so uttered the said last-mentioned piece of false and counterfeit money then and there well knowing the same to be false and counterfeit, against the form of the statute, &c. and against the peace, &c. And that the said I. H. on the said 19th day of August, in the 44th year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, one piece of false and counterfeit money, made and counterfeited to the

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likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm, called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm called a shilling, unlawfully, unjustly, and deceitfully did utter to one T. A. he the said I. H. at the time when he so uttered the said last-mentioned piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit, against the form, &c. and against the peace, &c.; and thereupon it was considered by the court there, that the said I. H. should be imprisoned in his majesty's gaol in the Castle of Lancaster aforesaid, for and during the term of twelve months, and that, at the expiration of that time, he should find sureties for his good behaviour for two years, as by the record thereof doth more fully appear. And the jurors aforesaid, now here sworn and charged to inquire for our said lord the king for the body of the said county of Lancaster, upon their oath aforesaid, do further present, *that the said I. H. having been so convicted as a common utterer of false money*, afterwards, to wit, on the 15th day of May, in the 53rd year of the reign of our sovereign lord George the third, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, at the parish of Whalley, in the county aforesaid, one piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm, called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm, called a shilling, unlawfully, unjustly, deceitfully, and feloniously did utter to one A. H. spinster, he the said I. H. at the time when he so uttered the said last-mentioned piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit, against the form, &c. and against the peace, &c.

(2nd count.) And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore, &c. *(the former conviction is here set out again, as in the first count.)* And the jurors aforesaid, now here sworn and charged to inquire for our said lord the king for the body of the said county of Lancaster, upon their oath aforesaid, do further present, *that the said I. H. having been so convicted as aforesaid*, afterwards, to wit, &c. *(as in the first count.)*

167. *Indictment for coining bank tokens (q).*

(Comm. as in pr. 1.) Feloniously did make, coin, and counterfeit, and cause and procure to be made, coined,

(q) By the stat. 52. G. 3. c. 138. reciting that the governor and company of the bank of England, had caused to be coined, stamped, and circulated, a large quantity of silver dollars, containing, on the obverse side thereof, an impression of his majesty's head, and the following words and letters, *videlicet*, "*Georgius III. Dei gratia rex*," and on the reverse side thereof the impression of Britannia and the following words and figures, *videlicet*, "Five shillings, dollar, bank of England, 1804"; and that the said governor and company had also issued and circulated, for the convenience of the public, a quantity of silver pieces, denominated tokens, for the respective sums of three shillings and one shilling and sixpence, such tokens for the sum of three shillings, containing, on the obverse side thereof, an impression of his majesty's head and the following words and letters, *videlicet*, "*Georgius III. Dei gratia rex*," and on the reverse side thereof the following words and figures, *videlicet*, "Bank token, 3 shill." with the addition of the year in which the same were respectively made and stamped; and such tokens for the sum of 1s. 6d. containing the same impression, words, and

letters on the obverse side thereof, as upon the said token for 3s. and on the reverse side thereof the following words and figures, *videlicet*, "Bank token 1s. 6d." with the addition of the year in which the same were respectively coined and stamped; and reciting further the intention, other like tokens for the sum of 3s. and 1s. 6d. it is enacted, that if any person, &c. shall make, coin, or counterfeit, or cause or procure, &c. or willingly act or assist in the making, &c. any coin, medal, or device whatsoever, resembling, or made with intent to resemble or look like any of the said dollars or tokens, or any of them, or to pass as such, every person so offending, and being thereof convicted by due course of law, shall be deemed and adjudged to be guilty of felony, and shall be transported for fourteen years.

By sec. 2. if any person shall utter, offer, or tender in payment, or sell or give in exchange, or pay or put off, to any person or persons, any such false or counterfeit dollar or dollars, token or tokens, as aforesaid, knowing, &c. and shall, either on the same day, or within the space of 10 days then next afterwards, utter, offer, &c. any more or other

and counterfeited, and did willingly act and assist in the making, coining, and counterfeiting one medal, con-

such counterfeit dollar, &c. knowing the same, &c. to the same or to any other person or persons, or shall at the time of such first uttering, &c. have in custody or possession one or more such counterfeit dollar, &c. or any piece or pieces of counterfeit money whatsoever, besides what was or were so uttered, &c. such person, &c. shall be deemed and taken to be a common utterer of such counterfeit dollars, &c. and being thereof convicted, shall suffer one year's imprisonment, and shall find sureties, &c. for two years more. Upon a second conviction of such offence, the offender to be deemed and adjudged to be guilty of felony, and to be transported for the term of 14 years.

By sec. 3. persons guilty, discovering offenders, not liable to prosecution.

By sec. 4. a certificate of conviction in another county, by the clerk of assize, &c. in that county, &c. shall, at the request of the prosecutor or any person on his majesty's behalf, be sufficient proof of such former conviction.

The same statute, s. 9. reciting, that divers frauds have been practised by making and publishing papers with certain words and characters so nearly resembling the notes and bills of the governor and company of the Bank of

England, as to appear to ignorant and unwary persons, to be the notes and bills of the said governor and company, enacts, that if any person shall engrave, cut, etch, scrape, or by any other means or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other means or device made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other means or devise making, in or upon any plate of copper, brass, steel, pewter, or of any other metal or mixture of metals, or upon wood, or any other materials, or upon any plate whatsoever, any word or words, figure or figures, character or characters, the impression taken from which shall resemble, or be apparently intended to resemble, the whole or any part of any of the notes or bills of the said governor and company, commonly called bank notes and bank post bills, or shall contain any word, number, figure, or character, in white, on a black, sable, or dark ground, without any authority in writing for that purpose from the said governor and company, to be produced and proved by the party accused, or shall, without such authority as aforesaid, use any such plate, wood, or other material so engraved, cut, etched, scraped, or by any other means

taining on the obverse\* side thereof, an impression of the head of his majesty our said lord the king, and the following words and letters, *videlicet*, "*Georgius III. Dei gratia rex*," and on the reverse thereof the following words and figures, *videlicet*, "Bank token, 3 shill. 1812." resembling and made with intent to resemble and look like silver pieces denominated tokens, issued and circulated by the governor and company of the bank of England for the convenience of the public, in pursuance of and by virtue of the statute in that case made and provided, for the sum of three shillings each, against the form of the statute, &c. and against the peace, &c.

*In a second count describe the counterfeit as a certain device resembling, and made with intent to resemble and look like, silver pieces denominated tokens, issued and circulated, &c. (as before.)*

or device made, or shall use any other instrument or device for the making or printing upon any paper, or other material, any word or words, figure or figures, character or characters, which shall be apparently intended to resemble the whole or any part of any of the said notes or bills of the said governor and company, or any word, number, figure, or character, in white, on a black, sable, or dark ground, or if any person or persons shall, without such authority as aforesaid, knowingly have in his, her, or their custody, any such plate, instrument, or device, or shall knowingly and wilfully utter, publish, and dispose of, or put away, any paper, or other material, containing any such word or words, figure or

figures, character or characters, as aforesaid, without lawful excuse, the proof whereof shall lie upon the party accused, every person so offending, in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

By the stat. 51 G. 3. c. 110. sec. 2. to bring counterfeited tokens into the kingdom, with intent to utter them, is felony. And by s. 3. to offer or tender in payment, or give in exchange, or pay or put off, such counterfeit tokens, knowing, &c. is a misdemeanor punishable by fine and imprisonment. The third offence to be deemed felony.

168. *Indictment for buying guineas (r).*

(Commencement as in *pr. 1.*) Unlawfully did pay to one R. R. for five pieces of gold coin, lawfully current within

(r) The stat. 52 G. 3. c. 50. continued by stat. 53 G. 3. c. 5. until the 25th of March, 1814,—no person shall receive or pay for any gold coin lawfully current within the *united kingdom*, any more in value, benefit, profit, or advantage than the true lawful value which such gold coin doth or shall by its denomination import, whether such value, benefit, profit, or advantage be paid, made, or taken in lawful money, or if paid or taken in Great Britain in any note or notes, bill or bills, of the company of the Bank of England, or in any silver token or tokens issued by the said governor and company, or if paid or taken in Ireland, in any note or notes, bill or bills, of the governor and company of the Bank of Ireland or in any silver token or tokens issued by the last-mentioned governor and company, or by any or all of the said means wholly or partly, or by any other means, device, shift, or continuance whatsoever; and every person who shall offend herein, shall be deemed and adjudged guilty of a misdemeanor, and being thereof convicted by due course of law, shall suffer six months imprisonment, and find sureties for his good behaviour for

one year more, to be computed from the end of the said six months. Upon a second conviction for the same offence, the offender liable to one year's imprisonment, and to find sureties for one year more, to be computed from the end of the last-mentioned year; a third, and every subsequent conviction, punishable by two years imprisonment.

By sec. 3. indictments upon this act shall not be traversed to any subsequent assizes or sessions.

By sec. 4. it is unnecessary to prove that the money, notes, bills, &c. received or paid for such gold coin, are good, lawful, and current money, &c. or good, valid, and effectual notes, &c.; but that such money, notes, &c. shall be taken to be respectively of the value they on the face of them import, until the contrary be proved to the satisfaction of the judge, justice, or court; and it is unnecessary to prove that the gold coin received or purchased contrary to the act, was of the current gold coin of this realm, but the same shall be taken and deemed so to be, if taken and received as such, until the contrary appear.

By sec. 5. if any person shall receive or pay any Bank of England or Bank of Ireland



this *realm* (s), called guineas, by their denomination importing to be of the value of five pounds and five shillings, more in value, benefit, profit, and advantage, than the true lawful value which such pieces of gold coin, by their denomination, imported to be of, to wit, one piece of silver coin, of lawful money of Great Britain, called a shilling, of the value of one shilling, 22 pieces of silver coin, called Spanish dollars, of the value of 5s. 6d. each, one piece of silver coin, called a Spanish half-dollar, of the value of 2s. 6d. and one piece of silver coin, called an American half-dollar, of the value of 2s. 6d. against the form of the statute, &c. and against the peace, &c.

(*Second count. Commencement as in pr. 5.*) Unlawfully did pay to the said R. R. for five other pieces of gold coin lawfully current within this realm (s), called guineas, by their denomination importing to be of the value of 5*l.* 5s. more in value, benefit, profit, and advantage, than the true lawful value which such last mentioned five pieces of gold coin, by their denomination imported to be of, to wit, one pound and two shillings more in value, benefit, profit, and advantage, than the true lawful value of such last-mentioned five pieces of gold coin, that is to say, he the said D. W. did then and there pay for the last-mentioned five pieces of gold coin, to the said R. R. one other piece of silver coin, of lawful money, &c. (*as in the first count.*)

(*Third count.*) Unlawfully did pay to the said R. R. for five other pieces of gold coin lawfully current within this realm (s), called guineas, by their denomination importing to be of the value of 5*l.* 5s. one other piece of silver coin of lawful money of Great Britain, called a shilling, of the value of one shilling, 22 other pieces of silver coin, called Spanish dollars, of the value of 5s. 6d. each, one other piece of silver coin, called a Spanish half-dollar, of the value of 2s. 6d. and one other piece of silver coin, called an American half-dollar, of the value of 2s. 6d. being more in value, benefit, profit, and advan-

notes, for less than the amount of lawful money expressed therein, the offender, on conviction, shall be deemed guilty of a misdemeanor, subject to a fine of double the amount of

the sum specified in such note, and to suffer imprisonment for a time not exceeding two months.

(s) In the stat. "*united kingdom.*"

tage, to wit, to the amount of 1*l.* 2*s.* more in value, benefit, profit, and advantage, than the true lawful value which such last-mentioned five pieces of gold coin, called guineas, by their denomination imported to be of, against the form, &c. and against the peace, &c.

(*Fourth count.*) Unlawfully did pay to the said R. R. for five pieces of gold coin, lawfully current within this realm, called guineas, by their denomination importing to be of the value of 5*l.* 5*s.* more in value, benefit, profit, and advantage, than the true lawful value, which such last-mentioned five pieces of gold coin, called guineas, imported to be of, that is to say, 1*l.* 2*s.* more in value, benefit, profit, and advantage, than the true lawful value of such last-mentioned pieces of gold coin, the said last-mentioned value, benefit, profit, and advantage, then and there being paid, partly in a certain piece of lawful silver money of Great Britain, and partly in certain foreign silver coin, against the form, &c. and against the peace, &c.

169. *Against a bankrupt for a fraudulent concealment of his effects (a).*

*Yorkshire*, to wit. The jurors for our lord the king, upon their oath present, that I. S. late of Alverthorpe, in the parish of Wakefield, in the county of York, clothier, dealer and chapman, on the 23d day of September, in the 50th year of the reign of our sovereign lord George the third, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, was, and for a long time, to wit, for the space of six months and more before then had been and was a clothier, dealer and chapman, and for all that time *did use and exercise the trade of merchandize, by way of bargaining, exchange, bartering, and chevizance*, and did seek his trade of living by buying and selling, to wit, at A. aforesaid, in the county of Y. aforesaid, and that the said I. S. so as aforesaid using and exercising the trade of merchandize,

(a) Under the stat. 5 G. 2. executed, York Spring ass. c. 30. s. 1. upon this indictment 1813. the prisoner was convicted and

by way of bargaining, exchange, bartering and chevizance, and seeking his trade of living by buying and selling as aforesaid, on the said 23d day of September, in the 50th year of the reign aforesaid, at A. aforesaid, in the county of Y. aforesaid, *became and was indebted* to I. D. in the sum of 100*l.* and upwards, for a just and true debt, and being so indebted, and so using and exercising the trade of merchandize by way of bargaining, exchange, bartering, chevizance, and seeking his trade of living by buying and selling as aforesaid, he the said I. S. on the said 23d day of September, in the 50th year aforesaid, at A. aforesaid, in the county of Y. aforesaid, *became a bankrupt* within the intent and meaning of the several statutes made and then and yet in force concerning bankrupts or some or one of them, and that afterwards, to wit, on the 1st day of October, in the 50th year of the reign aforesaid, the said I. D. then being such creditor of the said I. S. as aforesaid, and the said I. S. being indebted to him as aforesaid, on PETITION of the said I. D. as well for himself as for all other the creditors of the said I. S. made and exhibited in writing to the Right Hon. John Lord Eldon, then being lord high chancellor of Great Britain, a certain commission of our lord the king, sealed with the *great seal of the united kingdom* (a) of Great Britain and Ireland, founded upon the statutes made and provided against bankrupts, was duly *awarded and issued out* (b) by the said lord high chancellor, to wit, at Westminster, in the county of Middlesex, and to the jurors aforesaid now here shewn, bearing date at Westminster, the said 1st day of October, in the 50th year of the reign aforesaid, directed to I. P., H. I. M., esqrs. I. L., I. B., and I. L. P., gents. in and by which said commission our said lord the king did name, assign, appoint, constitute, and ordain them the said I. P., H. I. M., esqrs. I. L., I. B., and I. L. P., gents. the special commissioners of our said lord the king thereby giving full

(a) It seems that it would be sufficient to aver, that the commission was sealed with the great seal of Great Britain. See *R. v. Bullock*, 1 Taunt.

(b) The words of the stat. It is not sufficient merely to aver, that the commission was *awarded*. *Frith's case*, *Leach*.

power and authority to them four or three of them the said I. P. H. or I. M. to be one to proceed according to the statutes in the said commission mentioned, and all other statutes in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold, and customary goods, debts, and other things whatsoever, but also concerning all other persons, who by concealment, claim, or otherwise, did or should offend touching the premises, or any part thereof, contrary to the true intent and meaning of the said statutes, and to do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of the creditors of the said I. S. as towards and for all other intents and purposes, according to the ordinance and provision of the same statutes, willing and commanding them four or three of them, the said I. P. H. or I. M. to be one to proceed to the execution and accomplishment of that our said lord the king's commission, according to the true intent and meaning of the said statutes, with all diligence and effect, as by the said commission doth more fully appear; and that afterwards, to wit, on the 4th day of October, in the 50th year aforesaid, to wit, in the parish of W. aforesaid, in the county of Y. aforesaid, the major part of the said commissioners, in the said commission named, to wit, the said I. P. H., I. B., and I. L. P. administered to, and severally took before each other the oath of a commissioner of bankrupts, prescribed and specified by an act of parliament, made in the fifth year of his late majesty King George the 2nd, entitled, "An Act to prevent the committing of Frauds by Bankrupts," before they proceed to act in the execution of the said commission, according to the direction of the said act, and required to be taken by such commissioners, and did then and there respectively sign a memorial thereof, as by the said memorial by them the said commissioners entered and kept among the depositions and other proceedings on the said commission doth appear; and that afterwards, to wit, on the said 4th day of October, in the 50th year aforesaid, to wit, in the parish of W. aforesaid, in the county of Y. aforesaid, the major part of the said commissioners in the said commission named and appointed and authorized, to wit, the said I. P. H., I. B., and I. L. P. did proceed and under and in the execution of the said commission, did then and there find that the said I. S.

did, and before the date and issuing forth of the said commission against him, become bankrupt within the true intent and meaning of the several statutes made and then in force concerning bankrupts or some or one of them, and did then and there duly adjudge and declare the said I. S. bankrupt accordingly. And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on the said 4th day of October, in the 50th year of the reign aforesaid, notice in writing, signed by them the said I. P. H., I. B., and I. L. P. the major part of the said commissioners in the said commission named, appointed, and authorized, was, according to the direction of the statute in such case made and provided, delivered to the said I. S. personally, to wit, at the parish of W. in the county of Y. aforesaid, that the said commission of bankrupt had been issued against him the said I. S. and that he had been thereupon declared bankrupt; and the said I. S. was by them the said commissioners last named, thereby required and commanded personally to be and appear, and surrender himself to and before the major (a) part of the commissioners in the *said commission named*, on the 31st day of October, in the 51st year of the reign aforesaid, the 1st day of November the same year, and the 20th day of November the same year, at 12 of the o'clock at noon of each of the said days, at the sessions house in W. aforesaid, in the said county of Y. then and there to be examined according to the directions of the statute made in the 5th year of the reign of his late majesty king George the 2nd, intituled an act to prevent the committing of frauds by bankrupts, and thereupon to make full discovery and disclosure of all his estates and effects, and in all things to conform himself to the several statutes made concerning bankrupts; and afterwards, to wit, on the 9th day of October, in the 50th year of the reign aforesaid, notice was also given and published in the London Gazette, to wit, at the parish of W. aforesaid, in the county of Y. aforesaid, that a commission of bankrupt was awarded and issued forth against the said I. S. and that he, being declared a bankrupt, was thereby required to surrender himself to the said commissioners in the said commission

(a) These words are essential in an indictment for not surrendering, Frith's case, Leach, 12.

named, or the major part of them (b), on the said 31st day of Oct. in the 51st year of the reign aforesaid, the 1st and 20th days of Nov. in the same year, at 12 of the clock at noon on each of those days, at the sessions house in W. and make a full discovery and disclosure of his estate and effects, and at the last sitting the said bankrupt was thereby required to finish his examination. And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on the said 31st day of Oct. in the 51st year of the reign aforesaid, the major part of the said commissioners named, authorized, and appointed in and by the said commission, to wit, the said I. P. H., I. B., and I. L. P. did meet at the sessions house in W. in the county of Y. aforesaid, and did proceed under and in execution of the said commission\*, and they the said last-mentioned commissioners did then and there examine the said I. S. and the said I. S. then and there appeared and submitted himself to be examined by the said last-mentioned commissioners; but not being then and there prepared to make a full disclosure and discovery of his estate and effects, then and there desired further time for doing thereof, which was then and there granted to him accordingly\*\*, and that afterwards, to wit, on the said 1st day of November, in the 51st year of the reign aforesaid, at the sessions house in W. aforesaid, the major part of the commissioners named and authorized in and by the said commission, to wit, the said I. P. H., I. B., and I. L. P. did meet pursuant to the said notice, and did proceed under and in the prosecution of the said commission,\* and that the said I. S. did not make any disclosure or discovery of his estate and effects\*\*. And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on the said 20th day of Nov. in the 51st year aforesaid, at the sessions house, also called the new court house, in W. aforesaid, in the county of Y. aforesaid, the major part of the said commissioners named, appointed, and authorized in and by the said commission, to wit, the said I. P. H., I. B., and I. L. P. did meet in pursuance of the said notices, and did proceed under and in execution of the said commission; \* and the said I. S. then and there appeared and submitted himself and was examined by the said last-mentioned commissioners touching his estate

(b) This is necessary in an indictment for not surrendering, see Leach, 15.

and effects, but the said bankrupt not being able satisfactorily to answer all such questions as the said last-mentioned commissioners had put to him touching his the said I. S.'s estate and effects, without a further investigation of his books and papers, they the said last-mentioned commissioners did therefore \*\* then and there adjourn the said bankrupt's last examination until the 21st day of November inst. at that place at 12 of the clock at noon of the same day, at which time and place, that is to say, on the said 21st day of November, in the 51st year of the reign aforesaid, at the sessions house at W. aforesaid, in the county of Y. aforesaid, the major part of the said commissioners named, appointed, and authorized in and by the said commission, to wit, the said I. P. H., I. B., and I. L. P., &c. did meet and did proceed under and in the execution of the said commission, and thereupon the said I. S. then and there duly appeared before the said last-mentioned commissioners in order to finish his examination, pursuant to the said notice in the London Gazette for that purpose given, and they the said last-mentioned commissioners did then and there enter into the final examination of him the said I. S. pursuant to the said notice\*, and the said I. S. did then and there upon his corporal oath, the said last-mentioned commissioners then and there having sufficient and competent power and authority to administer the same oath to the said I. S. in that behalf, say, depose, and swear, (amongst other things,) that the book marked A. which was then produced and delivered up by the said I. S. with the goods and things seized by and under the said commission, did contain and were a full and true disclosure and discovery of all his the said I. S.'s estate and effects, both real and personal, and how and in what manner, to whom and upon what consideration, and at what time or times he had disposed of, assigned, or transferred any of his goods, wares, and merchandizes, money, or other estate and effects, and all books, papers, and writing relating thereto, of which he was possessed, or to which he was any ways interested or intitled, or which any person or persons before or had then had in trust for him or to his use, at any time before or after the issuing of the said commission, or whereby the said I. S. or his family had, or might have or expect, any profit, possibility of profit, benefit, or advantage whatsoever, except only such part of his estate and effects as had been really and *bona fide* before sold and

disposed of in the way of his trade and dealings, and except such sums of money as had been laid out in the ordinary expense of himself and family, and that at the time of that, his the said I. S.'s examination, he had delivered up to the said commissioners named, or the major part of them, or unto the assignees chosen under the said commission, all such part of his goods, wares, and merchandizes, money, estate and effects, and all books, papers and writings, relating thereto, as were then in his custody, possession, or power, the necessary wearing apparel of himself and children only excepted; and the said I. S. then and there further said, that he had not removed, concealed, or embezzled any part of his estate, real or personal, or any books of accounts, papers, or writings relating thereto, with an intent to defraud his creditors; and that the said I. S. then and there further said, that he had got two stalls in the cloth hall at Leeds, and that since his bankruptcy his wife paid to M. M. out of money belonging to the said I. S. the sum of 39*l.* and upwards, to take up a returned bill\*. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said I. S. did not, upon such his said examinations as aforesaid, or either of them, before the major part of the said commissioners in the said commission named, appointed, and authorized *§*, after the said I. S. became bankrupt, and after the issuing of the said commission as aforesaid, fully and truly disclose and discover all his estate and effects of which he was possessed, or to which he was interested or intitled before or after the time of the issuing of the said commission as aforesaid against him, except such part of his estate and effects as had been really and *bona fide* sold and disposed of in the way of his trade and dealings, and except such sums of money as had been laid out in the ordinary expenses of his family; nor did he the said I. S. upon such his said last examination, or before or afterwards, deliver up to the said commissioners, or the major part of them, or unto the assignees chosen under the said commission, all such part of his goods, wares, and merchandizes, money, estate and effects, and all books, papers, and writings relating thereto, as were at the time of his said examinations, or either of them, in his *custody, possession*, or power, (the necessary wearing apparel of himself, his wife and children only excepted,) but he the said I. S. not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after he became a bankrupt, and



after the issuing of the said commission against him, and after he was so adjudged and declared a bankrupt as aforesaid, and had notice thereof as aforesaid, to wit, on the 21st day of November, in the 51st year of the reign aforesaid, in the parish of W. aforesaid, in the county of Y. aforesaid, wilfully, fraudulently, and feloniously, and with intent to defraud his the said I. S.'s creditors in that behalf, did conceal and embezzle part of his said personal estate, to the value of 20 pounds and more, the same or any part thereof not being the necessary wearing apparel of himself, his wife, or children, that is to say, (*set out the goods,*) with intent to defraud his the said I. S.'s creditors, against the form, &c. and against the peace, &c.

(*2nd count, in describing the commission, alleges that,* "a certain commission under the great seal, founded upon the statutes made and provided against bankrupts, was duly awarded and issued out against the said I. S. by the name and description of, &c. bearing date at Westminster, on, &c." omits the averment that the commissioners took the oath, &c. omits also to allege the appearance of I. S. on the first examination, as from \* to \*\*, omits to negative any disclosure on the second examination, as from \* to \*\*, omits to allege the appearance and examination of I. S. on the third examination, as from \* to \*\*; and in stating the last examination, after the \* alleges, "and the jurors, &c. the said I. S. did not, upon such his said last examination, or afterwards, or at any time whatsoever, before the major part of the said commissioners in the said last-mentioned commission named and authorised," and proceeds as in the 1st count, from the §, p. 549.

*3rd count* states the trading, the debt, the becoming a bankrupt, that a commission was duly awarded and issued out, directed to, &c. whereupon, he was, by the major part, &c. duly declared to be a bankrupt—notice to the bankrupt—notice in the Gazette—the appearance on the 21st, until which day the final examination of him the said I. S. was duly adjourned and postponed—and the omission to disclose and discover, &c. then or within 49 days after the said notice, or at any time or place, &c. as in the first count.

**MALICIOUS MISCHIEF.**

170. *Indictment, under the Black Act, for breaking down the head and mound of a fish pond, whereby the fish were lost (c).*

(Commencement as in *pr. 1.*) The head and mound of a certain fish-pond, in a certain orchard belonging to M. N. there situate and being, unlawfully, *maliciously (d)*, and feloniously did break down, whereby the fish in the same pond then and there being, were then and there lost and destroyed, to the great damage, &c. against the form, &c. and against the peace, &c.

171. *For maliciously cutting down trees, &c. (e).*

(Commencement as in *pr. 1.*) Unlawfully, maliciously,

(c) Under the stat. 9 G. 1. c. 22. see note, p. 439. This stat. prescribes a peculiar mode of compelling offenders against it to appear: upon information upon oath, before two or more justices, of such offence committed, such justices shall certify such information to one of the principal secretaries of state; upon which his majesty in privy council may make an order, requiring the offender to surrender within the space of 40 days, to any justice of the K. B. or of the peace; such order to be published, &c. and proclaimed, &c. and in case the offender neglect, &c. he shall be adjudged to be convicted and attainted of felony.

(d) The malice must be personal against the owner of the property. Pearce's case, 2

Leach, 594. Kean's case, ib. 595. 609. Shepherd's case, 2 Leach, 609. Ranger's case, East. P. C. 1074.

(e) Under the same stat. see note, p. 439.

The stat. 6 G. 3. c. 36. reciting that divers persons had of late years wilfully and maliciously cut down, barked, or otherwise destroyed timber trees, &c. enacts, that every person who shall, in the night-time, lop, top, cut down, break, throw down, bark, burn, or otherwise spoil or destroy, or carry away, any oak, beech, ash, elm, fir, chesnut, or asp, timber tree, or other tree or trees standing for timber, or likely to become timber, without the consent of the owner or owners thereof first had and obtained, shall be deemed and be construed to be guilty of

and feloniously did cut down and destroy ten ash trees, planted in a certain avenue to the dwelling-house of one M. N. and then growing for ornament there, (he the said M. N. then and there being the owner (*f*) of the said trees), to the great damage of the said M. N. against the form, &c. and against the peace, &c.

172. *Indictment for forcibly rescuing a person from a constable, charged with feloniously sending a letter, without a name subscribed, demanding money (g).*

That on, &c. at, &c. one C. D. was brought by E. F. then being one of the constables of the same parish, before M. N. esq. then and yet being one of the justices of our said lord the king, assigned to keep the peace of our said

felony, and liable to be transported for 14 years; aiders, abettors, and receivers, to be liable to the same punishment.

By stat. 6 G. 3. c. 48. every person, who shall wilfully cut or break down, bark, burn, pluck up, lop, top, crop, or otherwise deface, damage, spoil, or destroy, or carry away, any timber tree or trees, or trees likely to become timber, or any part thereof, or the lops or tops thereof, without the consent of the owner or owners thereof first had, or in any of his majesty's forests or chases, without the consent of the surveyor or surveyors, or his or their deputy or deputies, or person or persons entrusted with the care of the same, shall, on conviction, forfeit not exceeding 20*l.* &c. together with the charges of such conviction; and upon non-payment thereof, be imprisoned, &c.; for a second offence, not exceeding 30*l.* &c.; and if he shall be guilty of the like offence a third time, and shall be convicted thereof in

like manner, shall be guilty of felony, and the court shall have authority to transport him for seven years.

By sec. 2. all oak, beech, chesnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore, and birch trees, shall be taken to be timber trees, within the meaning of the act; and so by stat. 13 G. 3. c. 33. are poplar, alder, larch, maple, or hornbeam.

Under the former of these acts, the offence, to amount to a felony, must be committed in the *night-time*, and the tree must be of the value of 5*s.*; otherwise it amounts to no more than a misdemeanor, punishable under the latter act, unless indeed the offence be repeated after a second conviction. See *R. v. Hitchcock and Howe*, East. P. C. 588.

(*f*) The name of the owner is essential. See *R. v. Patrick and Pepper*, Leach, 287. and *supra*, p. 194.

(*g*) Under the Black Act, 9 G. 1. c. 22. s. 1. see p. 439.

lord the king, in and for the said county of M. and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county; and that the said C. D. then and there was charged upon the oath of G. H. with feloniously, knowingly, and maliciously sending a certain letter, without any name subscribed thereto, to E. A. demanding money from the said E. A. and the said C. D. was then and there examined before the said M. N. the said justice, touching and concerning the aforesaid felony, and thereupon the aforesaid M. N. the said justice, then and there, in due form of law, did make a certain warrant under his hand and seal, bearing date, &c. directed, &c. (*set out the warrant*) which same warrant, afterwards, to wit, on, &c. at, &c. was delivered to the said E. F. then and there being an officer, that is to say, then and there being one of the constables of the said parish, and the said E. F. him the said C. D. in his custody, by virtue of the said warrant, and for the cause aforesaid, then and there had; and that the said C. D. late of, &c. labourer, A. B. late of the same, labourer, afterwards, to wit, on, &c. with force and arms, at, &c. in and upon the said E. F. (then and there being constable as aforesaid, and then and there lawfully having the said C. D. in his custody, by virtue of the said warrant, for the cause aforesaid,) in the peace of God and our said lord the king, and in the due execution of his said office, then and there being, *feloniously* did make an assault; and that the said A. B. the said C. D. out of the custody of the said E. F. and against the will of him the said E. F. then and there, with force and arms, unlawfully, forcibly, and feloniously, did rescue and put at large, to go where he would, to the great hindrance of justice, in contempt of our said lord the king and his laws, against the form, &c. and against the peace, &c.

173. *Indictment for feloniously and maliciously killing a gelding (h).*

One black gelding, of the price of fourteen pounds, of the goods and chattels of one C. D. in a certain field belonging to him the said C. D. then and there being, felo-

(h) Under the same stat. see are expressly mentioned in p. 439. The word *cattle* in- stat. 22 & 23 C. 2. c. 7. see cludes sheep and horses, which East. P. C. 1074.

niously, unlawfully, wilfully, and *maliciously* (*h*), then and there did kill and destroy, to the great damage of him the said C. D. against the form, &c. and against the peace, &c.

174. *Indictment for maliciously wounding a cow* (*i*).

One cow, of the price of seven pounds, of the goods and chattels of C. D. then and there being, feloniously, unlawfully, wilfully, and *maliciously* (*h*) did wound, to the great damage of the said C. D. against the form, &c. and against the peace, &c.

175. *For maiming a gelding* (*i*).

With a certain sharp instrument, called a bill-hook, made of iron and steel, which he the said A. B. in his right hand then and there had and held, feloniously, unlawfully, wilfully, and *maliciously* (*h*), did strike a certain gelding, then and there being, of the price of twenty pounds, of the goods and chattels of C. D. in and upon the left shoulder of the said gelding, giving to the said gelding thereby, by such striking as aforesaid, in and upon the said left shoulder of the said gelding, one deep wound of the breadth of five inches, and of the depth of four inches, and thereby did then and there feloniously, unlawfully, wilfully, and maliciously, maim and wound the said gelding, against the form, &c. and against the peace, &c.

176. *Indictment for cutting with intent to resist the lawful apprehension of the defendant for an offence* (*k*).

That T. R. late of the township of B. in the county of Lancaster, labourer, on, &c. with force and arms, at the

(*h*) The malice must be personal against the owner, see p. 351. n. (*d*).

(*i*) Under the same stat. see p. 439. See East. P. C. 1077.

(*k*) By 43 G. 3. c. 58. s. 1. it is enacted, that if any person or

persons shall, either in England or Ireland, wilfully, maliciously, and unlawfully shoot at any of his majesty's subjects; or shall wilfully, maliciously, and unlawfully present, point, or level any kind

township of Blackburn, in the county of L. in and upon one C. S. a subject of our said lord the king, then and there being, feloniously, wilfully, maliciously, and un-

of loaded fire arms at any of his majesty's subjects, and attempt, by drawing a trigger, or in any other manner, to discharge the same at or against his or their person or persons; or shall wilfully, maliciously, and unlawfully stab or cut any of his majesty's subjects, with intent in so doing, or by means thereof, to murder, or rob, or to maim, disfigure, or disable such his majesty's subject or subjects, or with intent to do some other grievous bodily harm to such his majesty's subject or subjects, or with intent to obstruct, resist, or prevent the lawful apprehension and detainer of the person or persons so stabbing or cutting, or the lawful apprehension and detainer of any of his, her, or their accomplices, for any offences for which he, she, or they may be respectively liable by law to be apprehended, imprisoned, or detained; or shall wilfully, maliciously, and unlawfully administer to, or cause to be administered to or taken by any of his majesty's subjects, any deadly poison, or other noxious or destructive substance or thing, with intent such his majesty's subject or subjects thereby to murder, or thereby to cause and procure the miscarriage of any woman then being quick with child; that then and in every such case, the person or persons so offending, their counsellors,

aiders, and abettors, knowing of and privy to such offence, shall be and are thereby declared to be felons, and shall suffer death as in cases of felony, without benefit of clergy.

Provided always, that in case it shall appear on the trial of any person or persons indicted for the wilfully, maliciously, and unlawfully shooting at any of his majesty's subjects, or for wilfully, maliciously, and unlawfully presenting, pointing, or levelling any kind of loaded fire arms, at any of his majesty's subjects, and attempting, by drawing a trigger, or in any other manner, to discharge the same at or against his or their person or persons, or for the wilfully, maliciously, and unlawfully stabbing or cutting any of his majesty's subjects, with such intent as aforesaid; that such acts of stabbing or cutting were committed under such circumstances as that if death had ensued therefrom, the same would not in law have amounted to the crime of murder, that then and in every such case the person or persons so indicted shall be deemed and taken to be not guilty of the felonies whereof they shall be so indicted, but be thereof acquitted.

And by sec. 2. it is enacted, that if any person or persons, from and after the said first day of July, in the said year of our Lord 1803, shall wilfully and

lawfully, did make an assault, and with *a certain sharp (l) instrument* then and there feloniously, wilfully, maliciously, and unlawfully, did strike and cut the said C. S. in and upon the left hand of him the said C. S. with intent, in so doing, wilfully, maliciously, and feloniously, to obstruct, resist; and prevent the lawful apprehension and detention of him the said T. R. *for a certain offence, to wit, for the felonious stealing, taking, and carrying away of 100 pounds weight of cotton twist*, of the value of twenty shillings, of the goods and chattels of the said C. S. before then feloniously stolen, taken, and carried away by him the said T. R. to wit, at the township aforesaid, in the county aforesaid, for which said offence, he the said T. R. was then and there liable by law to be apprehended, imprisoned, and detained, to the great damage of the said C. S. against the form of the stat. &c. and against the peace, &c.

(*Second count.*) And the jurors, &c. that the said T. R. heretofore, to wit, on, &c. with force and arms, at, &c. in and upon the said C. S. feloniously, wilfully, maliciously, and unlawfully, did make an assault with *a certain sharp (l) instrument, to wit, a knife*, and then and there feloniously, wilfully, maliciously, and unlawfully, did strike and cut the said C. S. in and upon the left hand of him the said C. S. with intent in so doing, feloniously, wilfully, maliciously, and unlawfully, to obstruct, resist, and prevent the lawful apprehension and

maliciously administer to, or cause to be administered to, or taken by any woman, any medicines, drug, or other substance or thing whatsoever; or shall use or employ, or cause or procure to be used or employed, any instrument or other means whatsoever, with intent thereby to cause or procure the miscarriage of any woman not being, or not being proved to be, quick with child at the time of administering such things, or using such means; that then and in every such case the person or persons so offending, their counsellors,

aiders, and abettors, knowing of and privy to such offence, shall be, and thereby are declared to be, guilty of felony, and shall be liable to be fined, imprisoned, set in and upon the pillory, publicly or privately whipped, or to suffer one or more of the said punishments, or to be transported beyond the seas for any term not exceeding fourteen years, at the discretion of the court before which such offender shall be tried and convicted.

(*l*) These words are usually inserted, but are not contained in the purview of the act.

detention of him the said T. R. *for a certain offence, to wit, for a felony*, before then committed by him the said T. R. at the township aforesaid, in the county aforesaid, for which said last-mentioned offence, he the said T. R. was then and there liable by law to be apprehended, imprisoned, and detained, against the form of the stat. &c. and against the peace, &c.

(*Third count.*) And the jurors, &c. that the said T. R. heretofore, to wit, on the day and year aforesaid, with force and arms, at the township aforesaid, in the county aforesaid, in and upon the said C. S. feloniously, wilfully, maliciously, and unlawfully, did make an assault, and with a *certain sharp instrument* then and there feloniously, wilfully, maliciously, and unlawfully, did strike and cut the said C. S. in and upon the left hand of him the said C. S. with intent in so doing, wilfully, maliciously, feloniously, and unlawfully, to obstruct, resist, and prevent the lawful apprehension and detention of him the said T. R. *for a certain offence* before then committed by the said T. R. to wit, at the township aforesaid, in the county aforesaid, for the committing of which said last-mentioned offence, he the said T. R. was then and there liable by law to be apprehended, imprisoned, and detained, against the form of the statute, &c. and against the peace, &c.

(*Fourth count.*) In and upon the said C. S. then and there being, feloniously, wilfully, maliciously, and unlawfully, did make an assault, and *with a certain sharp and cutting (m) instrument, to wit, a knife*, did then and there feloniously, wilfully, maliciously, and unlawfully, cut the said C. S. in and upon the left hand of him the said C. S. *with intent* in so doing, wilfully, maliciously, feloniously, and unlawfully *to disable him the said C. S.* to the great damage of him the said C. S. against the form of the stat. &c. and against the peace, &c.

(*Fifth count.*) In and upon the said C. S. then and there being, feloniously, wilfully, maliciously, and unlawfully, did make an assault, and with a certain sharp and cutting instrument did then and there feloniously, wilfully, maliciously, and unlawfully, cut the said C. S. in and upon the left hand of him the said C. S. with intent in so doing, wilfully, maliciously, feloniously, and unlawfully, to

(m) See the last note.



*do some grievous bodily harm* to him the said C. S. against the form of the statute, &c. and against the peace (n), &c.

177. *For maliciously shooting at and cutting (o).*

That I. M. late of Manchester, in the county of Lancaster, labourer, H. M. late of the said place, labourer, and T. M. late of the same place labourer, on, &c. with force and arms, at, &c. *with a certain pistol, loaded with gunpowder and divers, to wit, six leaden slugs*, feloniously, wilfully, maliciously, and unlawfully, did shoot at one J. M. then and there being a subject of our said lord the king, and in the peace of God and our said lord the king, then and there being, *and with divers sharp and offensive weapons, to wit, with a certain sword, and with a certain hedging hook*, him the said J. M. then and there being such subject as aforesaid, they the said I. M., H. M., and T. M. then and there feloniously, wilfully, maliciously, and unlawfully *did cut, with intent* in so doing, that is to say, in so shooting at and cutting the said J. M. and by means thereof feloniously, wilfully, and of their malice aforethought, *to murder him the said J. M.* then and there being such subject as aforesaid, against the form, &c. and against the peace, &c.

(*Second count.*) That the said I. M. &c. on, &c. with force and arms, at, &c. with a certain pistol loaded with gunpowder, and divers, to wit, six leaden slugs, feloniously, wilfully, maliciously, and unlawfully, did shoot at the said J. M. then and there being such subject as aforesaid, &c. (*as in the first count*) *with intent*, in so doing, that is to say, in so shooting at and cutting the said J. M. and by means thereof *to maim and disable* him the said J. M. then and there being such subject as aforesaid, against the form of the statute, &c. and against the peace, &c.

(*Third count.*) The like *with intent* in so doing, to wit, in so shooting at and cutting the said J. M. and by means thereof *to do some grievous bodily harm to him the said J. M.* then and there being such subject as aforesaid, against the form, &c.

(n) R. v. Robinson, Ass. Lanc. 1812. the prisoner was convicted and executed. (o) Under the stat. 43 G. 3. c. 58. s. 1. see p. 554.

(*Fourth count.*) And the jurors, &c. that the said I. M., H. M., and T. M. on said 18th day of April, in the 52nd year aforesaid, with force and arms, at, &c. *with a certain pistol loaded with gunpowder, and divers, to wit, six leaden slugs*, feloniously, wilfully, maliciously, and unlawfully, *did shoot* at the said J. M. then and there being such subject as aforesaid, and in the peace, &c. then and there being, *with intent* in so doing, and by means thereof then and there feloniously, wilfully, *and of their malice aforethought, to murder him* the said J. M. then and there being such subject as aforesaid, against the form of the statute, &c. and against the peace, &c.

(*Fifth count.*) *The like* with intent in so doing, and by means thereof, *to maim and disable him* the said J. M. then and there being such subject as aforesaid, against the form, &c.

(*Sixth count.*) *The like* with intent in so doing, and by means thereof *to do some grievous bodily harm* to him the said J. M. then and there being such subject as aforesaid, against the form, &c.

(*Seventh count.*) And the jurors, &c. that the said I. M., H. M., and T. M., on &c. with force and arms, at, &c. *with divers sharp and offensive weapons, to wit, with a certain sword and a certain hedging hook*, feloniously, wilfully, maliciously, and unlawfully, *did cut* the said J. M. then and there being such subject as aforesaid, and in the peace, &c. then and there being, with intent in so doing, and by means thereof, then and there *feloniously, wilfully, and of their malice aforethought, to murder him* the said J. M. then and there being such subject as aforesaid, against the form, &c.

(*Eighth count.*) *The like*, with intent in so doing and by means thereof, *to maim and disable him* the said J. M. then and there being such subject as aforesaid, against the form, &c.

(*Ninth count.*) *The like*, with intent in so doing and by means thereof, *to do some grievous bodily harm* to him the said J. M. then and there being such subject as aforesaid, against the form, &c.

(*Tenth count.*) And the jurors, &c. that the said I. M. &c. afterwards, to wit, on, &c. with force and arms, at, &c. with a certain pistol loaded with gunpowder, and divers, to wit, six leaden slugs, feloniously, wilfully, maliciously, and unlawfully, and knowingly, *did shoot at* the said J. M. *the said J. M. then and there being in his*

*own dwelling-house*, situate and being at, &c. against the form of the statute, &c. and against the peace, &c.

(*Eleventh count.*) And the jurors, &c. that the said I. M. &c. afterwards, to wit, on, &c. with force and arms, at, &c. with a certain pistol loaded with gunpowder, and divers, to wit, six leaden slugs, feloniously, wilfully, maliciously, and unlawfully, did shoot at the said I. M. against the form, &c. (*p*).

178. *For administering drugs to a woman quick with child, with intent to procure abortion (q).*

That A. B. late of, &c. labourer, on, &c. and on divers other days and times between that day and the ——— day of ———, in the year aforesaid, with force and arms, at, &c. wilfully, maliciously, and feloniously did administer to, and cause to be administered to and taken by, one C. D. single woman, then and there being, and on the said other days and times aforesaid there continuing to be, quick with child, \* divers large quantities, to wit, four ounces of a noxious and destructive substance, to wit, *savin* (*r*), with intent thereby to cause and procure the miscarriage of the said C. D. against the form, &c. and against the peace, &c.

179. *The same, the woman not being quick with child.*

Wilfully and maliciously did administer to, and cause to be administered to and taken by C. D. single woman, then and there being, and on the said other days and times aforesaid, there continuing to be with child, but not quick with child (*as before from the \**.)

In a *second count* allege the *administration, &c. to C. D.* not being quick with child.

180. *Indictment of felony for destroying a turnpike-gate.*

A certain turnpike-gate there, set up and erected to

(*p*) R. v. M'Glead and others, all convicted.

(*q*) Upon the same stat. see p. 554.

(*r*) The name of the drug is not material, see 3 Camp. 75. R. v. Goldsmith, and *supra*, p. 85.

prevent passengers from passing by without paying the toll, laid and directed to be paid, by an act of parliament made in the ——— year of the reign of ———, entitled, "An Act," &c. (*here set out the title of the act under which the toll is collected,*) with force and arms, wilfully, maliciously, and feloniously did throw down, level, and destroy, against the form, &c. and against the peace, &c. (s).

181. *Indictment for breaking into houses, shops, &c. with intent to destroy linen goods, woollen goods, frame-work (t), &c.*

(Commencement as in pr. 1.) The dwelling-house (or

(s) By stat. 13 Geo. 3. c. 84. s. 42. it is enacted, that if any person or persons whatever shall, either by day or night, wilfully or maliciously pull down, pluck up, throw down, level, or otherwise destroy, any turnpike-gate or turnpike-gates, or any post or posts, rail or rails, wall or walls, or any chain, bar, or other fence or fences belonging to any turnpike-gate, or any other chain, bar, or fence, of any kind whatsoever, set up or erected, or hereafter to be set up or erected, to prevent passengers from passing by without paying any toll, laid or directed to be paid, by any act or acts of parliament made for that purpose; or any house or houses erected, or to be erected, for the use of any such turnpike-gate or turnpike-gates; or any crane, machine, or engine made or erected, or to be made or erected, on any turnpike-road by authority of parliament, for weighing waggons, carts, or car-

riages; or shall forcibly rescue any person or persons, being lawfully in custody of any officer or other person for any of the offences before mentioned; that then, and in any of the said cases, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported to one of his majesty's plantations abroad for seven years, or shall be committed to prison for any time not exceeding three years, at the discretion of the judge or court before whom such offender shall be tried; and any indictment for such offences shall and may be inquired of, examined, tried, and determined in any adjacent county within that part of Great Britain called England, in such manner and form as if the facts had been therein committed.

(t) By stat. 4 G. 3. c. 37. s. 16. if any person shall, by day or by night, break into any house, shop, cellar, vault, or

shop, &c. as the case may be,) of one C. D. there situate, then and there feloniously and by force did break and

other place or building, or by force enter into any house, &c. with intent to steal, cut, or destroy any linen, yarn, or any linen cloth, or any manufacture of linen yarn belonging to any manufactory, or the looms, tools, or implements used therein, or shall wilfully or maliciously cut in pieces or destroy any such goods, either when exposed to bleach or dry, shall be guilty of felony without benefit of clergy.

By st. 22 G. 3. c. 40. s. 1. if any person shall, by day or by night, break into any house or shop, or enter by force into any house or shop, with intent to cut or destroy any serge or other woollen goods in the loom, or any tools employed in the making thereof; or shall wilfully and maliciously cut or destroy any such serges or woollen goods in the loom, or on the rack; or shall burn, cut, or destroy any rack on which any such serges or other woollen goods are hanged in order to dry; or shall wilfully and maliciously break or destroy any tools used in the making any such serges or other woollen goods, not having the consent of the owner so to do, every such offender, being thereof lawfully convicted, shall be guilty of felony, without benefit of clergy.

Sec. 2. enacts to the same effect as to silk goods, or tools used in the manufacturing thereof.

Sec. 3. enacts the like as to linen and cotton manufactures, &c.

Sec. 4. repeals the seventh clause of 12 Geo. 1. c. 34. which was similar to the 1st section above set forth, the legislature deeming it expedient to include those several offences in one act.

The eighth clause of 12 G. 1. extends it to combers and frame-work knitters.

By 28 G. 3. c. 55. if any person shall, by day or by night, enter by force into any house, shop, or place, with an intent to cut or destroy any frame-work, knitted pieces, stockings, or other articles being in the frame, or upon any machine or engine thereto annexed, or therewith to be used or prepared for that purpose; or shall wilfully cut or destroy any frame-work, knitted pieces, stockings, or other articles in the frame, or upon the machine or engine, or prepared for that purpose, or shall wilfully break, destroy, or damage any frame, machine, engine, tool, instrument, or utensil, used in making such frame-work, knitted pieces, stockings, or other articles or goods in the hosiery or frame-work knitted manufactory, not having the consent of the owner so to do; or break or destroy any machinery contained in any mill used in preparing or spinning of wool or cotton for the use of the stock-

enter, with intent, feloniously, wilfully, and maliciously to cut and destroy a large quantity of woollen serge, then and there being in a certain loom for the making thereof, (or to cut, destroy, and break divers, to wit, two looms then and there employed in the making of woollen goods, *according to the fact, using the language of the particular statute proceeded on,*) belonging to him the said C. D. in the said dwelling-house then and there being, against the form, &c. and against the peace, &c.

ing frames, every offender thereof convicted, shall be guilty of felony, and transported for not exceeding 14 years nor less than seven years.

The stat. 52 G. 3. c. 16. reciting that the stat. 28 G. 3. c. 55. has not proved effectual, *enacts*, that if any person or persons shall, by day or by night, enter by force into any house, shop, or place, with an intent to cut and destroy any frame-work, knitted pieces, stockings, or lace, or other articles or goods being in the frame, or upon any machine or engine thereto annexed, or therewith to be used or prepared for that purpose; or with an intent to break or destroy any frame, machine, engine, tool, instrument, or utensil used in and for the working and making of any such frame-work, knitted pieces, stockings, lace, or other articles or goods in the hosiery or frame-work knitted manufactory; or shall wilfully and maliciously, and without having the consent or authority of the owner, destroy or cut, with an intent to destroy or render useless, any frame-work, knitted pieces, stockings, lace, or other articles

or goods being in the frame, or upon any machine or engine as aforesaid, or prepared for that purpose; or shall wilfully and maliciously, and without having the consent or authority of the owner, break, destroy, or damage, with an intent to destroy or render useless, any frame, machine, engine, tool, instrument, or utensil used in and for the working and making of any such frame-work, knitted pieces, stockings, lace, or other articles or goods in the hosiery or frame-work, knitted stocking, or frame work lace manufactory, or shall wilfully and maliciously, and without having the consent or authority of the owner, break or destroy any machinery contained in any mill or mills used, or any way employed in preparing or spinning of wool or cotton, or other materials, for the use of the stocking or lace manufactory, every offender being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.—To continue in force till the 1st day of March, 1814.

(2nd count, for an actual destruction. commencement as in *pr. 5.*) 50 yards of woollen serge of the value of —l. of the goods and chattels of the said C. D. in a certain loom used in the making of woollen serge, belonging to him the said C. D. in the said dwelling-house of him the said C. D. then and there being, feloniously, wilfully, and maliciously, and without the consent of the said C. D. the owner thereof, did cut and destroy, against the form, &c. and against the peace, &c.

182. *For sending a letter threatening to charge a capital felony (b).*

(Commencement as in *pr. 1.*) Did knowingly send to one J. W. a certain letter with the name of him the said A. B. subscribed thereto, directed to Mr. J. W. threatening to accuse the said J. W. of having maliciously hired and procured a man wilfully to burn the dwelling-

(b) By stat. 30 G. 2. c. 24\*. s. 1. all persons who shall, after the 29th of September, 1767, knowingly send or deliver any letter or writing, with or without a name or names subscribed thereto, or signed with a fictitious name or names letter or letters, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with a view or intent to extort or gain money, goods, wares, or merchandizes from the person or persons so threatened to be accused, shall be deemed offenders against the law and

the public peace, and the court before whom such offender or offenders shall be tried, shall, in case he, she, or they be convicted of any of the said offences, order such offender or offenders to be fined and imprisoned, or to be put in the pillory or publicly whipped, or to be transported as soon as they conveniently may be, (according to the laws made for the transportation of felons,) to some of his majesty's colonies or plantations in America, for the term of seven years, as the court shall think fit to order.

\* This statute does not operate to the repeal of the stat. 9 G. 1. c. 22. for they are consistent with each other, the former applying to those cases only where an actual demand is made, the latter to those cases where no demand is made. *R. v. Robinson, Leach, 892.*

house of him the said A. B. being a crime punishable by law with death, with the view and intent to extort and gain money from the said J. W. being the person so threatened to be accused, and which said letter is of the tenor following, that is to say,

" Salford, August 29, 1803.

" Sir—The purport of this letter is to inform you, that last Saturday evening I was informed that you and J. M. hired a man to set the house on fire where I lived, in Church-street, which was done by your and J. M.'s order; now, sir, if you and J. M. do not come and give me ample satisfaction, your malicious actions shall be made known to the whole town.

A. B."

against the form of the statute, &c. and against the peace, &c.

(*Second count charges the defendant with sending a letter, threatening to accuse the said J. W. of having hired a man to set fire to the house of him the said A. B. being a crime punishable by law with pillory.*)

183. *For sending a threatening letter with a fictitious name subscribed thereto, demanding (c), &c.*

(*Commencement as in pr. 1.*) Knowingly, unlawfully, and feloniously did send a certain letter in writing,

(c) Upon the stat. 9 G. 1. c. 22. see note, p. 439.

The stat. 27 G. 2. c. 15. extending the stat. 9 G. 1. c. 22. enacts, that if any person or persons shall knowingly *send*\* any letter without any name subscribed thereto†, or signed with a fictitious name or names, letter or letters, threatening to kill or murder any of

the king's subject or subjects, or to burn their houses, out-houses, barns, stacks of corn and grain, hay or straw, though no money or venison nor other valuable thing shall be demanded in or by such letter or letters, or shall forcibly rescue any person being lawfully in custody of any officer or other person for the

\* Neither the *writing* nor the carrying of a threatening letter is within the statute. *Hammond's case*, Leach, 499. *Robinson's case*, Leach, 869.

† A letter to which initials are subscribed is within the statute. Leach, 899.



signed with a fictitious name, (or without any name subscribed thereto, *according to the fact*.) that is to say, with the name of P. C. directed to D. H., I. M., and B. T., by the names and descriptions of Messrs. H., M., and T. London, *demanding (d) money (e)*, and which said letter is of the tenor following (*f*), that is to say,

“ Manchester, March 31, 1812.

“ Mr. H. if you are not acquainted of your partner's, I. M.'s, transactions in Manchester, I will inform you; upwards of nine years since, he wanted to get J. M. a school-master, out of his house, that he might build his warehouse, which has lately been burnt, but could not remove him as soon as he wanted; the following plan he pursued: about 11 years since, my brother left Ireland and came to England, got into bad company, spent all his money, he and his companions took bad ways; my brother, wanting money, was prevailed on to set J. M.'s house on fire, which he did, for the reward of 20 guineas; about nine years since, my brother came home, and soon after fell ill, he desired we would send for our priest and another person, to take down, in writing, his confession; he then, in the presence of my father, myself, and brothers, confessed that he was hired to set the place on fire, the day before he tore the lock off the school-door, but was surprised when he came in the night to find the door fast,—but he got an iron crow and forced the door open,—he then went in, pulled the door after him, and then completed his infernal work; that being done, the next thing was to transport my brother to Ireland, accordingly a person was appointed, he went with him to Liverpool, and then saw him set sail for Ire.

said offence, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, without benefit of clergy.

(*d*) A request under a threat of libelling the prosecutor by charging him with murder, is within the words of the stat. 9 G. 1. c. 22.

(*e*) The words of the stat. are, “ *money, venison, or other*

*valuable thing.*” A bank note is within the latter words, (although it was not the object of larceny when the stat. was made,) both because it is sufficient if the thing be valuable *at the time of the demand*, and also because it was a *valuable* when the statute was made. Leach, 891.

(*f*) The letter must be set out, see p. 144.

land in the packet; my brother, after this confession, received the eucharist, and in less than 48 hours died; this, sir, is his confession on oath, and after his death we have all bound ourselves to be revenged, and have sought and completed our revenge, as you now find, by the same place in a heap of rubbish; after this was completed, I went back to Ireland, to acquaint my father and brothers what was done; we have again, a second time, mutually sworn to each other never to cease until you have made J. M.'s loss good in a double fold; if you choose to do this immediately we will forbear, if not, evil will be always at your peace.

P. C."

against the form of the statute, &c. and against the peace, &c.

*Second count, describing the letter as demanding a certain valuable thing, that is to say, double the loss sustained by the said J. M. by a fire in the same letter mentioned and referred to, and which said last-mentioned letter is of the tenor following, that is to say.*

*Third count—double the loss by the same letter pretended to have been sustained, &c.*

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## OFFENCES RELATING TO OFFICE.

184. *Information against a MAGISTRATE (g) for discharging a person out of custody, who had been committed for seducing manufacturers into foreign service.*

(Commencement as in pr. 1.) That on, &c. at, &c. E. F.

(g) No information will be granted by the court against magistrates for a mere error in judgment, *R. v. Cox*, 2 Burr. 785. *R. v. Bulmer and Baines*, 2 Burr. 1162.; but if it appear that the magistrates have been partially, maliciously, or corruptly influenced in the exercise of their discretion, and have consequently abused the trust reposed in them, they are liable to prosecution by indictment, information, or even possibly by action, if the malice be very gross and injuri-

esquire, then and still being one of the justices (h) \* of our said lord the king, assigned to keep the peace of our said lord the king, in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, within the said county committed,\*\* did make his warrant in writing, under his hand and seal, bearing date the day and year aforesaid, directed to the keeper of, &c. (*as in the warrant,*) reciting, that M. W. had been brought before him the said A. B. by W. P. headborough, and charged upon the oath of I. D. with seducing L. M., N. O., &c. natives of this kingdom, and manufacturers in glass, to go into foreign service, wherefore he the said A. B. esquire, being such justice, did charge and order the said keeper of, &c. to receive him the said M. W. into the custody of him the said keeper of, &c. then sent to him the said keeper, together with the said warrant, for want of sureties, and him the said M. W. safely to keep in his custody, until he the said M. W. should be discharged by due course of law, which said warrant, afterwards, to wit, on the day and year aforesaid, at, &c. was delivered to the said keeper of, &c. in due form of law to be executed, together with the said M. W. by virtue of which said warrant, the said keeper of, &c. kept and detained the said M. W. in his custody, in the said gaol, for the cause in the said warrant above specified. and the said — further giveth the court here to understand and be informed, that whilst the said M. W. was kept in the said gaol, in the custody aforesaid, for the cause aforesaid, to wit, on, &c. at, &c. one A. B. late of, &c. esquire, then and still being one of the justices, &c. well knowing the premises, but devising, designing, contriving, and intending to pervert the course of justice, and to acquire private lucre and gain, did, on, &c. with force and arms, at, &c. under colour of divers false pretences and informations, unlawfully, wilfully, and corruptly, procure the said M. W. to be discharged,

ous. R. v. Young and Pitts, 1 Burr. 556. R. v. Holland and another, 1 T. R. 692. R. v. Filewood and another, East, 26 G. 3.

(h) It is sufficient, in an indictment against any officer, to aver that being such, &c. did the act, see p. 151, 152. R. v. Holland, 5 T. R. 623,

and to escape and go at large from and out of the custody of the said keeper of, &c. in which he the said M. W. was so confined as aforesaid, for the cause aforesaid, without taking sufficient sureties for the personal appearance of the said M. W. at the then next general gaol delivery to be holden for the said county, to answer the aforesaid complaint against the said M. W. and by then and there knowingly taking insufficient sureties for the personal appearance of the said M. W. at the then next general gaol delivery to be holden for the said county, and also without any notice being first given to the prosecutor of the said M. W. or to E. F. esquire, who had so committed the said M. W. as aforesaid, for the cause aforesaid, of the intention of any person to become sureties for the personal appearance of the said M. W. as aforesaid, by then and there, to wit, on, &c. at, &c. making a certain warrant in writing, under the hand and seal of him the said A. B. then being such justice as aforesaid, bearing date, &c. directed to the keeper of, &c. by which said last-mentioned warrant, he the said A. B. did require the said keeper of, &c. to discharge out of custody the body of the said M. W. if detained for no other cause than what is expressed in the warrant of commitment of E. F. esquire, menning the aforesaid warrant of E. F. esquire, dated the ——— day of ——— then last, on the oath of I. D. &c. (*as in the former warrant,*) and also in and by the said last-mentioned warrant of him the said A. B. falsely alleging, that he the said A. B. had taken sufficient sureties for the personal appearance of him the said M. W. at the then next general gaol delivery to be holden for the said county, at, &c. whereas, in truth and in fact, the said A. B. did not take sufficient sureties for the personal appearance of him the said W. M. at the then next general gaol delivery for the said county, at, &c. by means whereof, he the said W. M. afterwards, to wit, on, &c. at, &c. was discharged from the said gaol, and then and there did escape and go at large; and also by means whereof, he the said M. W. did not appear at the then next general gaol delivery for the said county, to answer certain indictments, then and there, to wit, on, &c. at, &c. at the said then next general gaol delivery of the said county, preferred against him for the matters of complaint in the said warrant of

commitment specified, nor hath since appeared to be dealt with according to law, to the great hindrance of public justice, in contempt of our said lord the king and his laws, and against the peace, &c.

*Second count, stating generally that M. W. was duly committed to, &c. for want of sureties, being charged upon oath with, &c. (as before, and then proceed as in the last count.)*

185. *Against a magistrate for maliciously and corruptly refusing to license a public-house (i).*

That A. B. late of, &c. esquire, on the ——— day of September, &c. and long before was and continually from thence hitherto hath been, and still is, one of the justices of our said lord the king, assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county,\* acting in a certain division in the said county of M. commonly called the U. division, in which said division the parish of H. in the said county of M. then was and now is situate. And the jurors aforesaid, upon their oath aforesaid, do further present,\*\* that on the said ——— day of ———, in the year aforesaid, at U. in the said county, a general meeting of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of M. and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county in which the parish of H. then lay and now lies

(i) See *R. v. Young and Pitts*, 1 Burr. 556. where the court of K. B. held that they had no power or claim to review the reasons of justices of the peace, on which they form their judgments in granting licenses by way of appeal from their judgments, or overruling the discretion in that behalf entrusted to them; but that if it clearly appeared that the justices had been partially, maliciously or corruptly influenced in the exercise of their discretion, they are liable to prosecution by indictment or information.

and was and is situate as aforesaid, was duly held for the purpose of licensing persons to keep common inns and alehouses within the said division, according to the form of the statute in such case made and provided, by and before the said A. B. as such justice as aforesaid, and certain other persons, to wit, I. F., I. B., and E. H. esquires, then and there also being justices assigned to keep the peace of our said lord the king, in and for the said county of M. and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, and acting in and for the said division. And the jurors aforesaid, upon their oath aforesaid, do further present, that one B. H. being a person of good fame and of sober life and conversation, and being then and there desirous of keeping a common inn or alehouse, in a certain house situate and being in the parish of H. in the said county of M. and within the division aforesaid, commonly called or known by the name and sign of the \_\_\_\_\_, in which said house the trade and business of a victualler was then carried on, under and by virtue of a certain license before then for that purpose duly granted unto one J. M. then lately deceased, he the said B. H. did then and there, at the said general meeting, apply to the said justices to grant to him the said B. H. a license to keep a common inn or alehouse in the said house so called and known by the name or sign of the \_\_\_\_\_ as aforesaid, for the space of one year, to commence on the 29th day of the same September, in the year aforesaid, and did then and there, at the said general meeting, produce to and before the said justices so then and there met for the purpose of granting such licenses as aforesaid, a certificate under the hands of the then churchwardens and overseers of the poor, and of the then respectable and substantial householders and inhabitants of the said parish of H. in which the said house for which such license was applied for by the said B. H. as aforesaid, was and is situate as aforesaid, of his the said B. H.'s being a person of good fame and of sober life and conversation, and the said B. H. was then and there ready to enter into a recognizance with sufficient sureties for the maintenance of good order and rule within the same house, pursuant to the statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. so being such justice as aforesaid, and acting as aforesaid, not re-

garding his duty as such justice, but wrongfully and maliciously and corruptly intending to oppress, injure, hurt, and aggrieve the said B. H. by colour of his said office of a justice of the peace as aforesaid, did then and there, at the said meeting so held as aforesaid, on the said 17th day of September, in the 32nd year aforesaid, at U. aforesaid, in the said county of M. corruptly, maliciously, and unjustly, and without any lawful or reasonable cause whatever, and from motives of private partiality and favour unto and towards one R. S. the then keeper of a certain alehouse, situate in the division aforesaid, that is to say, a certain tavern or ale and victualling-house, then kept by the said R. S. situate in the parish of H. in the said county of M. in the said division, commonly called or known by the name or sign of the ———, refuse to grant to the said B. H. the said license, so by him applied for, as aforesaid, and did then and there, corruptly, maliciously, and unjustly, prevent and hinder such license from being granted to the said B. H. to the great damage of the said B. H. in breach and violation of the duty of the said A. B. as such justice as aforesaid, and against the peace, &c.

*Second count, similar to the first, after the \*\*.*

*Third count, stating an application by B. H. for a license to keep "a common inn or ale-house, in a certain house situate and being in the parish of H. in the said county, and within the division aforesaid, for the space of," &c. and that he produced "the certificate, by law required, of him the said B. H. being a person of good fame, &c. and was then and there ready to enter into a recognizance, with sufficient surety, according to the form of the statute, &c."*

186. *Information against a justice of the peace for causing a person to be imprisoned for want of bail in a matter not cognizable before him, and ordering him to be kept in close confinement, without pen, ink, or paper, or the sight of any friend.*

(*Comm. as in pr. 1.*) That one A. B. esquire, on, &c. at, &c. and long before was, and from thence hitherto hath been, and still is, one of the justices, &c. (*as in pr. 184 from \* to \*\*.*) And that on the said ——— day of ———, in the ——— year aforesaid, one C. D. of R. in the said county, innholder, was apprehended and taken into custody by one E. F. (who then,

and for a long time both before and afterwards, was one of the constables of R. aforesaid,) and by the said E. F. carried and conveyed in custody before the said A. B. being such justice as aforesaid, at his then dwelling-house, situate and being at L. in the said county of S. and there, to wit, at L. aforesaid, examined by the said A. B. so being such justice as aforesaid, touching and concerning a certain misdemeanor supposed to have been then lately committed and done by the said C. D. (in vilifying the character and hurting the trade of one G. H. of L. aforesaid, miller); and that the said C. D. was then and there charged and accused before the said A. B. being such justice as aforesaid, with having committed the said supposed offence: and the said attorney of our said lord the king, who prosecutes as aforesaid, further gives the court here to understand and be informed, That the said A. B. being such justice as aforesaid, wrongfully, unjustly, wickedly, and maliciously contriving and intending to hurt, injure, oppress, aggrieve, and prejudice the said C. D. in this respect, and to put him to great charges and expenses of his money, and to cause him to undergo and suffer great pain, torture, and anguish of body and mind, and wholly to ruin him, on the said — day of —, in the — year aforesaid, after the said examination of the said C. D. of, upon, and concerning the premises aforesaid, ordered and directed, that the said C. D. should find sureties for his personal appearance at the then next general quarter-session of the peace of our said lord the king, to be held in and for the said county of S. to answer the said charge; and because he the said C. D. did not, nor could conveniently, find such sureties as aforesaid, he the said A. B. so being such justice as aforesaid, further, wrongfully, unjustly, wickedly, and maliciously contriving and intending to hurt, injure, oppress, aggrieve, and prejudice the said C. D. as aforesaid, then and there, to wit, on the said — day of —, in the — year aforesaid, at L. aforesaid, in the said county of S. wrongfully, unjustly, and maliciously, against the will of the said C. D. and contrary to the laws of this realm, (by virtue and colour of a certain warrant of commitment for that purpose made, under the hand and seal of him the said A. B. being such justice as aforesaid,) committed the said C. D. a prisoner to a certain prison, called the house of correction, situate at L.



aforesaid, in the county aforesaid, to be there safely kept until he the said C. D. should find such sureties as aforesaid, and until he should be further examined concerning the premises; and then and there ordered, directed, and commanded the then keeper of the said prison to keep the said C. D. under close confinement in the said prison, and to deny him the use of pen, ink, and paper, and to let no letter be delivered to or from the said C. D. in any manner whatsoever, and also to let nobody see him or speak to him: and the said attorney of our said lord the king, who prosecutes as aforesaid, further gives the court here to understand and be informed, That the said A. B. being such justice as aforesaid, by virtue and under colour of the said warrant, order, and direction, did, on the said — day of —, in the — year aforesaid, and for a long time, to wit, for the space of four days, then next following, at L. aforesaid, wrongfully, wickedly, maliciously, and unjustly cause and procure the said C. D. to be closely confined and imprisoned in the said prison, and to be debarred, denied, and restrained from the use of pen, ink, and paper, and from the free access of his relations and friends to him in the said prison, to wit, at L. aforesaid, in the county aforesaid, whereby the said C. D. during all that time, underwent and suffered great pain, torture, hardship, and anguish, both of body and mind, and was deprived of his liberty and prevented and hindered from finding such sureties as aforesaid, and was put to great charges and expenses in and about the obtaining his release and discharge from such commitment and imprisonment,\* contrary to the laws and customs of this realm, in violation of the liberties, rights, and franchises of the subjects thereof, and against the peace of our lord the now king, his crown and dignity.

187. *Information against a justice of the peace, for causing a young woman to be publicly whipt as a disorderly person, without any view, information, or proof exhibited against her.*

(As in pr. 185 to the \*.) And that he the said A. B. being such justice as aforesaid, and being a person of a wicked and malicious mind and disposition, and having

no regard to justice, nor to the duty of his said office as such justice of the peace, but unlawfully, wickedly, and maliciously devising and intending to discredit, disgrace, aggrieve, and oppress one M. M. of the parish of C. in the said county of S. single woman, and to expose the said M. M. to ignominy, shame, scandal, and disgrace, did, on the said ——— day of ———, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unjustly, unlawfully, wickedly, and maliciously, and without any reasonable or probable cause whatsoever, under mere colour and pretence of his said office as such justice as aforesaid, cause and procure the said M. M. (being a young woman about the age of fifteen years, and being a person of good name, fame, credit, and reputation, and in the peace of God and our said lord the king,) to be taken into custody, imprisoned, and stripped quite naked down to her waist, and to be unlawfully, publicly, cruelly, and severely whipped and lashed upon her naked back with divers whips and cords by one J. R. then being the common beadle of the parish aforesaid, at a certain common whipping-post, then erected and being in the common market place of the town of B. in the parish and county aforesaid, in the presence and view of a great number of people then and there assembled and gathered together, as a loose, idle, and disorderly person, (the said ——— day of ———, in the year aforesaid, being a public market day in the said town of B.); by means of which said whipping and lashing, the back and shoulders of the said M. M. were greatly cut, bruised, and wounded, and the said M. M. by means of the premises became sick, weak, and disordered, and lost a great quantity of blood, which issued and flowed from the said cuts and wounds; whereas, in truth and in fact, neither the said A. B. nor any other justice of the peace of our said lord the king, in and for the said county of S. or elsewhere, had then and there any knowledge by his or their own view, or had then and there received or taken any information, examination, or other evidence upon oath whatsoever, that the said M. M. was, or had been, a loose, idle, or disorderly person; and whereas, in truth and in fact, the said M. M. never was a loose, idle, or disorderly person; to the great damage, scandal, and discredit of the said M. M. (*Conclusion as in the last pr. from the \*.*) (2nd count.) And the said attorney of our said lord the king, who prose-

cutes as aforesaid, further gives the court here to understand and be informed, that the said A. B. being such justice as aforesaid, unlawfully, wickedly, and maliciously devising and intending to injure and prejudice the said M. M. as aforesaid, afterwards, to wit, on the said ——— day of ———, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, wickedly, and maliciously, and without any reasonable or lawful cause whatsoever, in and upon the said M. M. did make an assault, and her the said M. M. then and there unlawfully (and without any view by him the said A. B. or any other justice assigned to keep the peace of our said lord the king in this realm, had, or any *legal* information exhibited or made to him the said A. B. by any person whatsoever, of any offence having been committed by the said M. M.) did beat, bruise, wound, whip, and ill-treat, so that her life was greatly despaired of. (*Conclusion as in pr. 33.*) (*3rd count, alleging an assault by A. B. being such justice. 4th count, for a common assault, as in pr. 34.*)

188. *Indictment for refusing to watch with the constable when duly summoned.*

That A. B. late of, &c. yeoman, on, &c. and long before, was an inhabitant in the parish aforesaid, in the county aforesaid, and that the said A. B. then and there was duly summoned and required to watch in the night of the same day with C. D. then being one of the constables of the same parish, in the county aforesaid: nevertheless, the said A. B. wholly neglecting his duty in that behalf, then, to wit, in the night of the same day, or in any part of the same night, did not watch with the said constable, in the parish aforesaid, in the county aforesaid, but to do his duty in that behalf then and there totally did neglect, and wilfully, obstinately, and contemptuously, then and there did make default, in contempt of our said lord the king and his laws, and against the peace &c.

189. *Indictment for a contempt by the headborough in refusing to convey a person to prison, upon a commitment by a justice of peace.*

That on, &c. at the parish of, &c. one E. F. was

brought by one A. B. then being one of the headboroughs of the same parish, before G. H. esq. then and yet being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, and that the said E. F. then and there was charged, upon the oath of one I. K. before the said justice, with having violently assaulted her, in breach of the peace; and that the said E. F. was then and there examined before the said G. H. the justice aforesaid, concerning the said offence, so as above charged upon him; upon which, and for that the said E. F. could not then find sureties before the same justice for his personal appearance at the then next general quarter session of the peace, to be holden for the county aforesaid, to answer of and concerning the premises, he the said G. H. being such justice as aforesaid, at the parish aforesaid, in the county aforesaid, in due form of law, did make a certain warrant under his hand and seal, bearing date on the said — day of —, in the year aforesaid, directed, &c. (*the terms of the warrant should be accurately set out,*) to the keeper of —, (the same being a certain gaol and prison of our said lord the king,) situate and being at, &c. commanding the said keeper that he should receive into his custody the body of the said E. F. charged, upon the oath of the said I. K. with the premises above specified, and for want of sureties; and the said justice, by his warrant aforesaid, did command the said keeper the said E. F. safely to keep, until he the said E. F. by due course of law from thence should be discharged; which same warrant afterwards, to wit, on the said — day of —, in the — year aforesaid, at the parish aforesaid, in the county aforesaid, was delivered to the said A. B. then being one of the headboroughs of the same parish, and then and there having the said E. F. in his custody, for the aforesaid cause; and the said A. B. then and there was required and commanded by the said G. H. the aforesaid justice, immediately to convey the said E. F. to the said prison, and to deliver the said E. F. to the keeper thereof, together with the aforesaid warrant. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said A. B. late of the parish aforesaid, in the county aforesaid, yeoman, afterwards, to wit, on the said — day of —, in the year aforesaid, then as aforesaid be-

ing one of the headboroughs of the same parish, and then having the said E. F. in his custody for the cause aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully and contemptuously did neglect and refuse to convey the said E. F. to the said ———, being such gaol and prison as aforesaid, together with the said warrant, as he the said A. B. by virtue of his said office, according to law, should and ought to have done,\* to the great hindrance of justice, and against the peace, &c.

190. *Indictment for a contempt by a high constable, in disobeying an order of sessions.*

That at the general quarter session of the peace of our lord the king, holden at C. in and for the county of D. to wit, on, &c. before L, M, N, &c. esquires, and others their fellows, \* justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the same county, \*\* it was ordered, by the same justices and court there, as followeth, to wit, it is ordered by this court, "that, (*set out the order accurately,*) as by the said order of court more fully appears; of which said order the said A. B. the high constable (*or one of the high constables, according to the fact,*) in the aforesaid order named, afterwards, to wit, on, &c. at, &c. had notice (*a*): nevertheless, the said A. B. late of, &c. gent. on the said — day of —, in the year aforesaid, (then being high constable of —, as in the said order above mentioned,) on, &c. at, &c. unlawfully and contemptuously did neglect and refuse to, (*negativing the performance of the order,*) as by the said order he the said A. B. was required to do, in contempt, &c. to the great hindrance and obstruction of justice, and against the peace, &c.

191. *Indictment against a constable for not appointing any watch, and absenting himself from watching.*

That A. B. late of, &c. on, &c. yeoman, and long before, was, and still is, one of the constables (*b*) of the parish aforesaid, in the county aforesaid; and that the aforesaid

(a) See p. 153.

(b) See p. 152.

A. B. by reason of his office aforesaid, ought to appoint sufficient watch to be kept through the whole night by men, being inhabitants of the same parish, in convenient places within the parish aforesaid, for the preservation of the peace of our said lord the king, and for the apprehending of malefactors and suspicious persons: nevertheless, the said A. B. so being such constable, and neglecting his duty in this behalf, in the night of the aforesaid — day of —, in the year aforesaid, or in any part of the said night, at the parish aforesaid, in the county aforesaid, did not appoint any watch to be kept by men, being inhabitants of the same parish, within the parish aforesaid; but then and there, the whole night aforesaid, from his said office voluntarily and obstinately did absent himself, and contemptuously did make default therein, in contempt of our said lord the king and his laws, and against the peace, &c. ~

*192. Indictment against a constable for refusing to assist another in securing a person in custody for a breach of the peace, in contempt of a justice's order.*

That on, &c. at, &c. divers disorderly persons, to the number of twenty and more, to the jurors aforesaid as yet unknown, then and there did unlawfully, riotously, and routously assemble and meet together to disturb the peace of our said lord the king; and being then and there so unlawfully, riotously, and routously assembled and met together, did commit divers outrages, to the great terror of all the liege subjects of our said lord the king, as well inhabiting and residing as passing and repassing there, and against the peace of our said lord the king, his crown and dignity; and that J. H. then being one of the constables of the said parish, did then and there apprehend and take, and cause to be apprehended and taken, the body of one D. S. late of U. in the county aforesaid, nailor, being one of the principal persons so as aforesaid unlawfully, riotously, and routously assembled and gathered together, to disturb the peace of our said lord the king as aforesaid, and the said D. S. in the custody of him the said J. H. for the cause aforesaid, then and there had; and that afterwards, to wit, on, &c. at, &c. he the said J. H. the constable aforesaid, by the order and direction of E. M. esquire, then and yet being one of the justices, (*as in pr. 190 from \* to \*\**,) did, in his

proper person, apply to T. L. then of the said parish of A in the county aforesaid, blacksmith, and then being (d) also one of the constables of the said parish, and by such order and direction he the said J. H. did, in his majesty's name, then and there charge and require the said T. L. forthwith to go along with him the said J. H. to aid and assist him in the preservation of the peace of our said lord the king, and for the better securing of the said D. S. so as aforesaid in custody for the cause aforesaid, in order to his being brought to justice, and dealt with according to law for the same; yet the said T. L. so as aforesaid being one of the constables of the said parish as aforesaid, well knowing (d) the premises, but not regarding the duty of his said office, afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, obstinately, and contemptuously, did neglect and refuse to aid and assist the said J. H. for the purpose and on the occasion aforesaid, in the manner he the said T. L. was charged and requested to do as aforesaid, or in any other manner whatsoever, contrary to his duty in that behalf, (conclusion as in *pr.* 189.)

193. *Against a constable for neglecting to return his presentments at the assizes.*

That A. B. late of, &c. carpenter, on, &c. at, &c. and long before was constable of the township of R. aforesaid, yet the said A. B. not regarding the duty of his said office, on the same day and year aforesaid, at S. in the said county of S. unlawfully and contemptuously did neglect and refuse to make and return to the Honorable H. B. esquire, one of the justices of our said lord the king of his Court of Common Pleas at Westminster, and W. N. esquire, one other of the justices of our said lord the king of the same court, and others their fellows, justices of our said lord the king of oyer and terminer, at the assizes and general session of oyer and terminer of our said lord the king, then and there holden before the said justices for the said county, (by virtue of his majesty's letters patent to them for that purpose directed,) an account in writing of what trespasses, nuisances, and other offences against the king's peace were commit-

(d) See p. 152.

ted, and of all other articles and things by him presentable as such constable as aforesaid, and which return he the said A. B. was, by virtue of his office aforesaid, and by the laws and customs of this realm, bound to have made to the said justices at the assizes and general session of oyer and terminer aforesaid. (*Conclusion as in pr.* 189.)

194. *Indictment against an overseer of the poor, for refusing to pay to a pauper a weekly sum of money, contrary to an order of two justices (e).*

*West Riding of Yorkshire, to wit.* That S. F. of the township of C. in the west riding of the county of York, spinster, before the making of the order of justices herein-after mentioned, to wit, on, &c. at, &c. aforesaid, was delivered of a female bastard child, which said bastard child, at the time of the making of the order, and also at the time of the contempt and disobedience herein-after mentioned, was, and yet is, living, to wit, at the township of C. aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said S. F. having such bastard child as aforesaid, she the said S. F. on the same day and year aforesaid, at C. aforesaid, became and was very poor and impotent, and not able to provide for herself and her said bastard child; and the said S. F. so being very poor and impotent, and not able to provide for herself and her said bastard child as aforesaid, she the said S. F. afterwards, to wit, on the same day and year aforesaid, at the township of C. aforesaid, applied to the then overseers of the poor of and for the township of C. aforesaid for relief in the premises; and that the then overseers of the said poor, and each and every of them, then and afterwards, did wholly neglect and refuse to relieve the said S. F. so being very poor and impotent as aforesaid, to wit, at the township of C. aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said S. F. so being very poor and impotent, and unable to provide for herself and her said bastard child, after such neglect and refusal as aforesaid, to wit, on the same day and year aforesaid, at the township of C. aforesaid, appeared before H. W. clerk, and W. W. esquire, then being two of the justices, of

(e) *R. v. Fearnley*, 1 T. R. 316.



our said lord the king, assigned to keep his peace in and for the riding aforesaid, in the said county of York, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said riding, in the county aforesaid, committed: and then and there, before the said H. W. and W. W. being such justices as aforesaid, took her corporal oath, and did depose, that she the said S. F. was very poor and impotent, and unable to maintain herself and her said child; and that she the said S. F. had then lately applied for relief to the then overseers of the poor of the said township, and was by them the said overseers refused to be relieved on that occasion. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said H. W. and W. W. being such justices as aforesaid, did thereupon afterwards, to wit, on the same day and year aforesaid, at the township of C. aforesaid, duly summon the said overseers to appear before them, the said H. W. and W. W. being such justices as aforesaid, and shew cause why relief should not be given to the said S. F. in the premises; and that the said then overseers, having been so summoned as aforesaid, did, before the said H. W. and W. W. being such justices as aforesaid, refuse to relieve the said S. S. on that occasion, and did not shew to the said justices any sufficient cause why relief should not be granted to the said S. F.; and that the said H. W. and W. W. being such justices as aforesaid, did thereupon, afterwards, to wit, on the same day and year aforesaid, at the township of C. aforesaid, make their certain order in writing, signed with the proper hands and sealed with the seals of them the said H. W. and W. W. so being such justices as aforesaid; whereby, after reciting that the said S. F. had made oath unto them the said H. W. and W. W. two of his majesty's justices of the peace for the said riding, that she the said S. F. was very poor and impotent, and not able to provide for herself and her bastard child; and that she the said S. F. had then lately applied for relief to the overseers of the poor of the said township, and had been by them refused to be relieved; and after reciting also, that the overseers of the poor of the said township had been duly summoned to shew cause why relief should not be given to the said S. F. but had refused to relieve her with sufficient relief, and had not shewn any sufficient cause why relief should not be granted to her, they the said H. W. and W. W. did thereby "order the

then churchwardens and overseers of the poor of the said township, or some or one of them, to pay unto the said S. F. the sum of one shilling and sixpence weekly, and every week, for and towards the support and maintenance of her and her said bastard child, until such time as they should be otherwise ordered, according to law, to forbear the said allowance." And the jurors aforesaid, upon their oath aforesaid, do further present, That one J. F. late of the township of C. aforesaid, in the said west riding of Yorkshire, clothier, on, &c. and long before, and afterwards, was one of the overseers of the poor of and for the township of C. aforesaid, having duly accepted the said office, to wit, at the township of C. aforesaid; and that it was then and there the proper office and duty of the said J. F. as such overseer as aforesaid, well and faithfully to execute and obey the said order of the said H. W. and W. W. so made as aforesaid, according to the exigency thereof. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said order of the said H. W. and W. W. so made as aforesaid, afterwards, to wit, on the same day and year aforesaid, at the township of C. aforesaid, in the riding aforesaid, was duly shewn and delivered to the said J. F. so being such overseer as aforesaid, to be by him well and faithfully executed and obeyed in all things, according to the exigency thereof, and according to the said office and duty of the said J. F. as such overseer as aforesaid (f). \* And the jurors aforesaid, upon their oath aforesaid, do further present, That the said J. F. so being such overseer as aforesaid, and so having seen and received the said order as aforesaid, afterwards, to wit, on the said ——— day of ———, in the year aforesaid, and conti-

(f) It was objected, on demurrer, that a demand should have been alleged, but on this point the court gave no opinion. The objection would be obviated, by alleging at the \*, that the said J. F. so being such overseer, as aforesaid, and so having received the said order, as aforesaid, on the day and year aforesaid, and on divers other days and times, between that day and

the taking of the inquisition, and whilst he continued to be such overseer, was requested by the said J. F. to pay her the said sum of one shilling and sixpence, to wit, at &c.

It was also objected, that the sum was not payable till the end of the week, but the court were of opinion, that it was payable at the beginning of the week. 1 T. R. 316.

nually from thenceforth, for and during all such time as the said J. F. continued in the said office of overseer of the poor of the town of C. aforesaid, unlawfully, wilfully, obstinately, and contemptuously, did neglect and refuse and hath wholly hitherto neglected and refused to pay unto her the said S. F. the sum of one shilling and sixpence, or any part thereof, weekly, and every week, for and towards the support and maintenance of her the said S. F. and her said bastard child; as by the said order be the said J. F. as such overseer as aforesaid, was required to do; and the same, and every part thereof, is still wholly due and unpaid to the said S. F.; and also before the said J. F. hath not, at any time whatsoever, hitherto been otherwise ordered, according to law, to forbear the said allowance, contrary to the said office and duty of him the said J. F. to the damage of her the said S. F. and against the peace, &c.

195. *Against two collectors of taxes for EXTORTING (g) money under colour of their office.*

*Borough of Leeds, in the county of York, to wit (h), that* I. A. of Leeds, in the borough aforesaid, linen draper, and W. B. late of Leeds, aforesaid, in the borough aforesaid, grocer, there being collectors of several sums assessed upon the inhabitants of a certain liberty, called Leeds upper division, within the borough aforesaid mentioned and expressed, in a certain assessment made and confirmed, in pursuance of a certain act of parliament

(g) It is said that extortion, in a large sense, includes every oppression under colour of right; but that, in a strict sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. 1 Haw. 170.

And it has been resolved, that a promise to pay them money for the doing of a thing which the law will not suffer them to take any thing for, is merely void. 1 Haw. 171.

And by the stat. 3 Edw. 1. c. 26. (which is only in affirmation of the common law,) no sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth shall yield twice as much, and shall be punished at the king's pleasure. See the stat. 3 E. 1. c. 27. s. 30. and 2 Ld. Ray. 1265. See the APPENDIX.

(h) R. v. Atkinson and another, 3 Ld. Raymond, 61.

made in the first year of the reign of our said lady, the now queen of England, &c. entitled, "An Act for granting an Aid to her Majesty by divers Subsidies and a Land-tax," the said I. A. and W. B. on, &c. in the borough aforesaid, by colour of the office aforesaid, unlawfully, extorsively, and deceitfully, and of their own wrong, exacted, received, and had, of one T. C. then of Leeds aforesaid, in the borough aforesaid, (being not assessed at all by virtue of the act of parliament aforesaid,) the sum of four shillings (i), and that the said I. A. and W. B. the same sum of four shillings, so as aforesaid, of the said T. C. unlawfully, extorsively, and deceitfully exacted, received, and had, and to the proper use of them the said I. A. and W. B. then and there unlawfully, injuriously, and deceitfully converted, to the great damage of him the said T. C. and against the peace, &c. (i).

196. *Indictment against a constable, for extorting money of a person apprehended by him, on a bench warrant, to let her go without carrying her before any justice of the peace.*

(k) That A. F. late of, &c. yeoman, on, &c. at, &c. then being one of the constables of the same parish, at the parish aforesaid, in the county aforesaid, did take and arrest one N. L. spinster, by colour of a certain warrant, commonly called a bench warrant, which he the said A. B. then and there had, to apprehend the said N. L. to answer to a certain trespass and assault, whereof the said N. then stood indicted, as the said A. B. then and there alleged and pretended, and the said A. B. her the said N. then and there had in his custody; and that the said A. B. afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, corruptly, deceitfully, and extorsively, for the sake of gain, and contrary to the duty of his

(i) Qu. whether it would not be safer to aver, "under pretence that he the said T. C. had been assessed under the said act; and was then and there liable, by virtue of such assessment, to pay to them the said sum."

(k) An indictment for extortion may be laid in any county, 31 Eliz. c. 5. See 2 Ins. 210. Com. Dig. Ext. C. The indictment may be joint, Str. 73. Ld. Ray. 1248.

office, did extort, receive, and take of and from the said N. the sum of five shillings, of lawful money of Great Britain, for discharging the said N. out of the custody of him the said A. B. without conveying her before any justice of the peace for the said county, to answer to the said trespass and assault, whereof she was supposed to stand indicted as aforesaid, to the great damage, &c. and against the peace, &c.

*197. Indictment against a tipstaff of the Court of King's Bench for extortion.*

That A. L. late of, &c. gentleman, on, &c. at, &c. unlawfully, unjustly, and extorsively, did exact and receive of and from one R. H. two pieces of gold coin, of the proper coin of this kingdom, called guineas, of the value of forty-two shillings, under colour and pretence of being tipstaff to the Right Honourable W. Earl of M. then chief justice of our said lord the king, assigned to hold pleas in the court of our lord the king, before the king himself, under colour and pretence of a fee due to him the said A. for not carrying the said R. H. to prison, after he had taken and arrested him the said R. H. by virtue of a warrant under the hand and seal of the said W. Earl of M. chief justice aforesaid, issued forth against the said R. H. to answer to an indictment then before found against the said R. H. at the general quarter session of the peace held for the county aforesaid, for an assault upon A. A. as the said A. L. then and there alleged to the said R. H. whereas in truth and in fact no such fee was then due to the said A. L. in that behalf, to the great damage of the said R. H. and against the peace, &c.

*198. Indictment against the servant of a clerk of a market for extortion.*

That E. R. late of, &c. yeoman, on, &c. at, &c. under colour of being servant and agent to T. R. and C. P. esquires, clerk of the market of the household of our said lord the king, unlawfully, unjustly, and extorsively, did demand, receive, and have, of one W. C. the sum of fourteen pence, of lawful money of Great Britain, for and as a fee for examining, marking, and sealing of five quart pots made of pewter, seven pint pots made of pewter, and two half-pint pots made of pewter; whereas, in truth and in fact, there was then no such fee due to the said

T. R. and C. P. the said clerk of the market of the household of our said lord the king, in that behalf, to the great damage and oppression of the said W. C. and against the peace, &c.

199. *Indictment against a coroner for extortion (1).*

That W. N. late of the parish of S. in the county of Gloucester, gent. (the said parish of S. being the usual place of abode of him the said W. N.) on, &c. then being one of the coroners of our said lord the king for the county of Gloucester, at, &c. by colour of his said office, unlawfully and unjustly did demand, extort, receive, and take of and from one R. S. the sum of fifty shillings, of lawful money of Great Britain, for and as his fee for executing and doing of his office aforesaid, to wit, upon the

(1) By stat. 3 Edw. 1. c. 10. no coroner shall take any thing to do his office, upon pain of great forfeiture to the king.

But by stat. 3 Hen. 7. c. 1. upon an inquisition taken upon view of the body murdered, he shall have thirteen shillings and four-pence of the goods of the murderer, and if he hath nothing, of the amerciaments of the township for the escape of the murderer.

And by stat. 1 Hen. 8. c. 7. s. 1. the coroner shall have nothing where the inquisition is taken upon view of one slain by misadventure. Penalty forty shillings.

Justices of assize, and justices of the peace within the county where any such default of the coroner be, have power and authority to inquire thereof, and determine the same as well by examination as presentment. 1 Hen. 8. c. 7. s. 2.

But by stat. 25 Geo. 2. c. 29. s. 1. the fees are now settled, that the coroner be paid twenty shillings, and also nine-

pence for every mile he is obliged to travel from his usual place of abode, to be paid out of the county rates.

And by s. 4. of the same statute, it is enacted, that no coroner to whom any benefit is given by that act shall, by colour of his office, or upon any pretext whatsoever, take for his office doing, in case of the death of any person, any fee or reward, other than the said fee of thirteen shillings and four-pence, limited as is aforesaid by the said act made in the third year of the reign of king Henry the seventh, and other than the recompense limited and appointed by this statute, upon pain of being deemed guilty of extortion.

By s. 6. a coroner, convicted of extortion, or wilful neglect of his duty, or misdemeanor in office, may be removed from office by judgment of the court in which he is convicted, unless such office be annual, or annexed to some other office.

view of the body of one J. C. late of Stow in the Wôld, in the said county of Gloucester, glazier, who at the parish of S. aforesaid, in the county aforesaid, on the day and year above mentioned, was slain by misadventure, and there lay dead in contempt of our said lord the king and his laws, to the great damage of the said R. S. against the form of the statutes, &c. in such case made and provided, and against the peace, &c.

200. *Against a headborough for extortion.*

That A. B. late of, &c. yeoman, on, &c. with force and arms, at, &c. then being one of the headboroughs of the same parish, by colour of his said office, unlawfully, unjustly, and extorsively did exact, extort, receive, and have of and from one E. F. the sum of five shillings, of lawful money, as and for a pretended fee of him the said A. B. for taking and arresting the said E. F. by virtue of a warrant of B. H. esquire, (one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county), directed to, &c. (*as in the warrant,*) and for the obtaining and discharging of the same warrant, as the said A. B. did then allege; whereas, in truth and in fact, no fee whatever was then due to the said A. B. from the said E. F. in that behalf, to the great damage of the said E. F. and against the peace, &c.

201. *Against a gaoler for extortion in office (m).*

That A. B. late of, &c. and continually afterwards, until the day of exhibiting this information (*or until the day of the taking this inquisition if by indictment,*) was and yet is keeper of the prison of our said lord the king, of ———, at, &c. in the county of ———, and the office of keeper of the said prison, at the parish aforesaid, in the county aforesaid, during the whole of the time aforesaid, took upon himself, exercised, and had, and still undertakes, exercises, and has; yet the said A. B. not regarding the duty of the said office, but abusing the trust in him reposed, and contriving and intending the liege subjects of our said lord the king, for his private gain, to oppress, impoverish, and greatly harrass, and the

(m) *R. v. Broughton, Trem. P. C. 111.*

due execution of justice, as much as in him lay, to retard and obstruct, on, &c. (n) at, &c. under colour of his office, as keeper of the said goal, unlawfully, unjustly, and extorsively, did exact, obtain, and have, and into his hands and custody receive from one E. O. the sum of 2s. 4d. for charging one A. H. esquire, then a prisoner in the said prison, and in the custody of him the said A. B. with an action for 200l. prosecuted at the suit of him the said E. O. (o); and that he the said A. B. on, &c. at, &c. \* under colour of his office, as keeper of the said gaol, unlawfully, unjustly, and extorsively, did exact, receive, and have, and into his hands and possession obtain, from one H. M. two pieces of gold, commonly called guineas, each piece thereof being lawful money, &c. and of the value, &c. \*\* for ease and favour to and for relieving and releasing one B. D. from his irons, he the said B. D. then and there being a prisoner in the said gaol, and in the custody of the said A. B. detained for a felony and murder before then by the said B. D. supposed to have been committed; and that the said A. B. on, &c. at, &c. (*as before, from \* to \* \**.) for the discharging of the said P. P. from the said prison, out of the custody of the said A. B. although, in truth and in fact, no such sum was due to the said A. B. upon such discharge; and whereas also one J. T. and T. K. on, &c. at, &c. in the night of the said day, had been taken and apprehended by one T. H. then constable of the said last-mentioned parish, then and there being upon his watch, as malefactors, night walkers, and suspicious persons, and by the said constable had been there taken and conveyed to the said prison, and committed and delivered into the custody of the said A. B. by him in the same prison to be safely kept, until the said persons so taken and committed, at a convenient time the next day, could be taken before some justice, assigned to keep the peace of our said lord the king, within the county aforesaid, to be examined and dealt with according to law; and that he the said A. B. then and there had and detained the said J. T. and T. R. in the said prison, in his custody, and then and there un-

(n) In the original this and several other offences are laid to have been committed in the interval between the day first named and the day of exhibiting the information, but it is

more technical to allege a day certain.

(o) As to the necessity for alleging that nothing was due, see p. 142.



dertook to keep them in manner and for the end aforesaid, yet the said A. B. afterwards, and before the said J. T. and T. K. had been or could have been brought before any justice, to wit, on, &c. at, &c. voluntarily and unlawfully, and without any legal warrant or authority, discharged and dismissed the said J. T. and T. K. out of his custody, by means whereof the said malefactors escaped without punishment, contrary to his duty in the execution of the said office, to the great scandal, disgrace, and obstruction of justice, to the great damage, grievance, oppression, and ruin of many of the subjects of our said lord the king, and against the peace, &c.

202. *Order of sessions for the discharge of a clerk of the peace for extortion (p).*

Whereas, by a complaint and charge in writing at this sessions, held the said — day of —, preferred and exhibited to this court against R. B. of Appleby, in the county of W. gentleman, clerk of the peace for the said county, who, the — day of — last past, and during the whole last general quarter sessions of the peace held for this county, did claim and exercise the said office of clerk of the peace for this county, the said R. B. was charged with divers misdemeanors, by him committed in the execution of the said office of clerk of the peace for this county, viz. that he the said R. B. the said — day of — last, did, *under colour of his said office, extorsively exact and receive from one prisoner L. and compel him to pay to the said R. B. the sum of eight shillings and six-pence, for a subpoena to summon four witnesses to give evidence for him at the general quarter sessions of the peace, to be holden on, &c. in and for the said county, which subpoena contained but twelve lines, and for which no other or greater sum than — shillings was due to the said R. B.; and that the said R. B. also did, at the said general quarter sessions held for this county, under colour of his said office extorsively exact and receive of one I. S. of Woodside, a poor labourer, and force him to pay to him the said R. B. the sum of nine shillings more than his just fees, for, &c.; and also, that the said R. B. had committed divers other exactions and extortions, particularly mentioned in the said charge in writing; and now at this ge-*

(p) See 1 Will. & M. sess. 1. c. 21. *R. v. Baines, Ltd. Ray.* 1265.

neral quarter sessions held by adjournment, on the said — day of —, upon due examination, in open court, of the said matters alleged against the said R. B. who by order of this court hath been duly summoned to answer the same, and did attend in person, and had particular notice of each charge against him, and made defence by his counsel thereunto, and upon full proof of the premises made, in open court, it doth appear to this court that the said R. B. hath misdemeaned himself in his said office of clerk of the peace of this county, and in execution thereof, by exacting and extorting, by colour of his said office, from the said prisoner L. on the said — day of — last past, the sum of six shillings for the said subpœna to summon the said four witnesses, which is three shillings and sixpence more than the accustomed fee of right due for the same, and by exacting and extorting, by colour of his said office, at the last general quarter sessions, from the said I. S. nine shillings more than his just fees, and thereupon this court doth openly in court discharge and remove the said R. B. from the office of clerk of the peace of this county of W. and he is thereby, by this court, discharged from the same accordingly (q).

203. *Indictment against a coroner for refusing to take an inquisition (r).*

That on, &c. at, &c. one C. D. at L. in the county of

(q) The defendant objected to this order, after it had been removed into the Court of K. B. that the introductory part of the order was nothing more than an inference from the facts, and of itself was too general and uncertain to support the order; and that the statement of facts was insufficient, because those allegations were wanting, which have been above supplied in italics. C. J. Holt and Mr. J. Powell held, that the order was vicious; Powys and Gould, justices, that it was

sufficient. The court, being thus divided, agreed, that the case should be argued before all the judges in England, and that judgment should be given according to the majority of opinions. In the result, four of the judges were of opinion, that the order was good, and eight were of opinion that it should be quashed, and it was quashed accordingly. *Ld. Ray.* 1265.

(r) By stat. 8 Hen. 1. c. 7. s. 2. justices of assize and of the peace within the county,

L. was drowned and suffocated in a certain pond, and of that drowning and suffocating she the said D. C. then and there instantly died; and that the body of the said D. C. at L. aforesaid, in the county aforesaid, lay dead, of which one A. B. late of G. in the county aforesaid, gentleman, afterwards, to wit, on the said ——— day of ——— in the year aforesaid, then being one of the coroners of our said lord the king, for the county aforesaid, at G. aforesaid, had notice: nevertheless, the said A. B. not regarding the duty of his office in that behalf, afterwards, to wit, on, &c. at &c. to execute his office of and concerning the premises, and to take inquisition of our said lord the king, according to the laws and customs of this realm, concerning the death of the said D. C. unlawfully, obstinately, and contemptuously, did neglect and refuse; and that the said A. B. no inquisition in that behalf hath as yet taken, against the peace, &c.

204. *For refusing to take the office of overseer after a due election.*

That A. B. late of the parish of C. on, &c. and long before, was, and still is a substantial housekeeper, residing within the parish aforesaid, in the county aforesaid, and a proper and able person to serve the office of an overseer of the poor of the said parish; and that the said A. B. on, &c. at, &c. by warrant under the hands and seals of ———, clerk, and ———, clerk, two of the (s) justices of our said lord the king, assigned to keep his peace in and for the county of D. (one of them, to wit, the said ——— then being of the quorum,) was law-

have power and authority to inquire of and determine upon the defaults of coroners, by examination and presentment. See 25 Geo. 2. c. 29.

By stat. 3 Edw. 1. c. 9, coroners concealing felonies, or not doing their duty, through favour to the misdoers, shall be imprisoned a year, and fined at the king's pleasure.

And by stat. 3 Hen. 7. c. 1. if any coroner be remiss, and

make, not inquisitions upon the view of the body dead, and certify the same to the goal-delivery, he shall forfeit to the king an hundred shillings.

(2). In all indictments for refusing to take an office, it is essential to shew that the defendant was under a *legal obligation* to undertake it, by setting forth *how he was elected*. See p. 150.

fully nominated and appointed one of the overseers of the poor of the said parish for one year (t) then next ensuing, or until another overseer should be appointed in his stead, whereof the said J. H. afterwards, to wit, on, &c. at, &c. had due notice; nevertheless the said J. H. not regarding his duty in that behalf, but contriving and intending, as much as in him lay, to render the said warrant of appointment of no effect, from the said ——— day of ———, in the year aforesaid, and continually afterwards, until the day of the taking of this inquisition, at, &c. unlawfully, wilfully, obstinately, and contemptuously did neglect and refuse to take upon himself and execute the said office of overseer of the poor of the said parish. (*Conclusion as in pr. 205.*)

**205. Indictment against a person for refusing to take the office of chief constable (u).**

(*Commencement as in pr. 190, to the \*\*.*) One A. B. late of the parish of ———, in the said county of ———, yeoman, then and long before being inhabitant and residing in the parish aforesaid, within the hundred of L. in the said county, and a proper person to execute the office of chief constable within the said hundred, at the same session by the justices above named, in due manner was elected to be one of the chief constables of the hundred aforesaid, in the room and stead of one M. N. whereof the said A. B. afterwards, to wit, on, &c. at, &c. had notice: nevertheless, the said W. B. not regarding his duty in that behalf, but contriving and intending, as much as in him lay, to prevent and hinder the due execution of justice, from the said ——— day of ———, in the year aforesaid, until

(t) By this the court will intend the overseer's year. See *R. v. Burder*, 4 T. R. 778.

(u) Every justice of the peace may cause two constables to be chosen in each hundred; and this seems to be meant of the high constables of hundreds, and to include the swearing of them. *Dalt. c. 28.*

The usual manner is, that these high constables of hun-

dreds be chosen either at the quarter sessions of the peace; or, if out of the sessions, then by the greater number of the justices of the peace of that division where they dwell; and likewise that they be sworn, either at the sessions, or by warrant from the sessions; which course hath been allowed and commended by the judges of assize. *Ibid.*

the day of the taking of this inquisition, at the parish aforesaid, within the hundred aforesaid, in the county aforesaid, unlawfully, wilfully, obstinately, and contemptuously, did refuse to take upon himself and execute the said office of chief constable within the hundred aforesaid, contrary to his duty in that behalf, in manifest contempt and delay of justice, and against the peace of our said lord the king, his crown and dignity.

206. *Indictment against a person for refusing to take the oath of constable of a manor, to which office he had been duly elected at a court-leet (x).*

That at a court-leet of —, lord of the manor of B. in the county of W. held in and for the said manor of B. on, &c. before R. S. gentleman, then being steward of the said court of the said —, lord of the said manor, J. D. late of the parish of D. within the manor aforesaid, in the county aforesaid, brazier, according to the custom of the said manor, was duly nominated and elected by J. R. &c. (*the names of the jurors*) the jury then and there duly sworn at the said court-leet, as well for our said lord the king as for the said lord of the said manor, according to the custom of the said manor, one of the constables of the said manor of B. for the year then next ensuing, (he the said J. D. then being an inhabitant and resident of and within the said manor, and a fit person to be so nominated and elected, and a person liable to be nominated and elected to the said office;) \* and that afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the manor and county aforesaid, the said J. D. had notice from the said R. S. so being steward as aforesaid, of such his nomination and election as aforesaid; and that afterwards, to wit, on, &c. at, &c. in the manor and county aforesaid, the said R. S. then being such steward as aforesaid, did certify under his hand and seal to G. P. esquire, then being one of the justices, (*as in pr. 190, from \* to \*\**,) that the said J. D. had, according to the custom of the said manor, been appointed, at a court-leet held in and for the said manor of B. on the said — day of —, in the year aforesaid, constable of the said manor of B. whereupon the said G. P. the justice aforesaid, afterwards, to wit, on, &c. at, &c. did make and issue a certain summons under his hand

(x) See p. 150.

and seal, directed to the constable and headborough of B. aforesaid for that time being, thereby requiring them, and each of them, forthwith to summon the said J. D. to appear before him the said G. P. being such justice as aforesaid, at the house of J. C. in B. aforesaid, on, &c. by three of the clock in the afternoon of the same day, to take the oath of office of constable for the said manor of B. so being nominated and elected for and to that office as aforesaid. And the jurors aforesaid now here sworn, upon their oath aforesaid, do further present, That the said J. D. afterwards, to wit, on the said ——— day of ———, in the ——— year aforesaid, at the parish aforesaid, in the manor and county aforesaid, was duly summoned by R. B. then being constable of the manor of B. aforesaid, to appear before the said G. P. being such justice as aforesaid, at the house of the said J. C. in B. aforesaid, on, &c. by three of the clock in the afternoon of that day, to take the oath of office aforesaid, according to the tenor of the said summons; and that although the said J. D. personally appeared before the said G. P. on the day and at the place in that behalf aforesaid, according to the summons aforesaid, and was then and there required by the said G. P. to take the said oath of office of constable of and for the said manor of B. according to the nomination and election aforesaid; yet the said J. D. then and there, to wit, on, (*state the refusal as in pr. 204.*) (*Second count, alleging the election, as before, to the \**); and that afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in the manor and county aforesaid, the said J. D. then being personally present in the said last-mentioned court, was required by the said R. S. then being steward as aforesaid, then and there to be sworn into and take upon himself the said office of constable, in and for the said manor, according to such his nomination and election as last aforesaid; yet the said J. D. then and there (*neglect and refusal as before.*)

207. *Indictment against a person for refusing to take the oath of constable of the ward of Farringdon Within, after being elected at a court of wardmote (y).*

That F. M. late of, &c. merchant, op, &c. and long be

(y) See p. 150.

fore, and continually from thence until the day of the taking of this inquisition, was an inhabitant and resiant paying scot and bearing lot within the said parish of C. C. in the ward of Farringdon Within, in London aforesaid, and a fit and proper person to execute the office of constable within the said ward; and that within the same ward there is, and from time whereof the memory of man is not to the contrary hath been, a certain court of our lord the now king and his predecessors, kings and queens of England, called the wardmote, held and to be held in every year upon the feast-day of Saint Thomas the apostle, (unless the same feast should happen to be on a Sunday, and in such case then upon the day next following such Sunday,) before the alderman of the ward aforesaid for the time being, or his deputy, in which said court of wardmote, according to the custom within the said ward used and approved of, during the time last aforesaid, to wit, in the parish and ward aforesaid, all the men inhabiting and resiant, paying scot and bearing lot within the ward aforesaid, for the time being, have been used and accustomed, and ought and were bound, by reason of their residence, to appear in the said court and do their suit there; and in the said court of wardmote, according to the custom of the said ward, the said men inhabiting and resiant, paying scot and bearing lot within the same ward for the time being, were, during the whole time aforesaid, used and accustomed, and ought, to appoint and choose yearly divers persons then inhabiting and resiant, and paying scot and bearing lot within the ward aforesaid, constables, to and for the said ward, for the preserving of the peace of our said lord the king, and for the apprehending of rogues, vagabonds, and other suspicious persons within the ward aforesaid, for the public good; which said persons, so as aforesaid appointed and chosen, were used and accustomed, and ought, to hold the same office for the year then next ensuing, and until other persons should be elected into the said office; and also were used and accustomed, and ought, on the Monday next after the feast of the Epiphany next after their said election, to appear at the guildhall of the said city of L. (z) \* in the court then and there held before the mayor and aldermen of the same city for the time being, for all the time aforesaid, and

(z) Qu. whether the situation of the guildhall should not be alleged.

take their corporal oaths before such mayor and aldermen for the due execution of the said office of constable. And the jurors aforesaid, upon their oath aforesaid, do further present, That, according to the custom of the ward aforesaid, a court of wardmote was holden for the said ward of Farringdon Within, to wit, in the said parish of C. C. in the said ward, on, &c. at, &c. before J. P. then being the lawful deputy of W. B. esquire, then and now being one of the aldermen of the said city, and then and yet alderman of the said ward; and that the said court of wardmote was in due manner continued, by several adjournments, until the ——— day of ———, in the ——— year aforesaid; and that at the same court of wardmote, being duly holden by adjournment on the said ——— day of ———, in the ——— year aforesaid, within the said parish of C. C. in London aforesaid, in the parish and ward aforesaid, before the said J. P. the deputy aforesaid, the said F. M. was lawfully and in due manner, by the then inhabitants and residents paying scot and bearing lot within the ward aforesaid, according to the custom of the said ward and the court of wardmote aforesaid, for and during all the said time immemorially used and approved of, elected into the office of one of the constables in and for the said ward for one whole year then next ensuing, and until another person should be elected to the said office, for preserving the peace of our said lord the king, and for the apprehending of rogues, vagabonds, and other suspicious persons within the said ward for the public good; and that the said F. M. afterwards, to wit, on the said ——— day of ———, in the ——— year aforesaid, at London aforesaid, in the parish and ward aforesaid, had due notice thereof from A. B. gentleman, then being vestry clerk of the parish of C. C. and then and there was duly required to appear amongst others in the said court, to be holden before the then mayor and aldermen of the said city of L. at the guildhall of the same city, on Monday next after the feast of the Epiphany then next following, there to take his corporal oath for the due execution of his said office, and to execute his said office; yet the said F. M. not regarding his duty in this behalf, but intending and endeavouring wholly to neglect and omit the due execution of his said office, on the said Monday next after the feast of the Epiphany, and continually afterwards until the day of the taking of this in,



quisition, (although often duly requested, to wit, at London aforesaid, in the parish and ward aforesaid,) hath altogether voluntarily, obstinately, and contemptuously, refused and denied, and yet doth refuse and deny, to take his said oath for the due execution of his said office, or to execute his said office in any manner whatsoever, contrary to his duty in that behalf, in manifest contempt of our said lord the king and his laws, to the great hindrance of justice, and against the peace, &c.

*Second count*—stating a custom to choose constables within and for the several precincts of the said ward, and stating the election of the defendant to be constable for a particular precinct, and his refusal as before.

In the original Ind. C. C. A. 55. is another count, stating the election of the defendant at a court of wardmote, duly held according to the custom of the city,

208. *Indictment against a headborough for not taking the office after a due election (a).*

That our said sovereign lord the king and his predecessors, from time whereof the memory of man is not to the contrary, have had and held, and have been accustomed to have and hold, a court of view of frankpledge once in every year, before the sheriff of the county of M. for the time being, in the torn of the sheriff of M. made through the hundred of O. in the county of M. within the month after Easter in every year, and at the same court, when holden, there now is and from the time whereof the memory of man is not to the contrary, hath been a certain ancient and laudable custom there used and approved of, to wit, that certain inhabitants and residents, within the said hundred, were then and there sworn to charge and inquire of and present those things that belonged to them in that court to present, which said jurors, so sworn and charged, also at that court chose and present, and during all the time aforesaid, have chosen and presented, and have been used and accustomed, and of right ought to choose and present, two proper persons of the inhabitants and residents in the said parish, within the hundred aforesaid, in the county aforesaid, to be headboroughs within and for the said parish, for the year then ensuing, and until other inhabitants and residents of the said parish should be and are

(a) See p. 150.

chosen and sworn into the said office, for the preserving the peace of our said lord the king, and for the apprehending of rogues, vagabonds, and other suspicious persons within the said parish, and for the doing of all other matters relating to the said office of headborough; and that during all the time aforesaid, there was and yet is an ancient custom used and approved at the said court, that the said persons, so chosen and presented, should have notice given to them of such their said election, and be summoned to appear in the said court upon such notice and summons, and then and there take their corporal oath for the due execution of their said office, and to execute the same; and the jurors aforesaid, now here sworn upon their oath aforesaid, further present, that at a court of view of frankpledge of our said lord the king, holden before S. F. esquire, and I. S. esquire, then and yet sheriff of the county aforesaid, in the torn of the said sheriff, through the hundred of O. in the county aforesaid, within the month after Easter, in the year of our Lord ———, to wit, on ———, within the hundred of O. aforesaid, in the county aforesaid, C. D., E. F., &c. good and lawful men, inhabiting and residing within the hundred aforesaid, were then and there sworn and charged, according to the custom of the said court, to inquire of and present those things that belonged to them in that court to present; and the same jurors, at the said court so sworn and charged, according to the custom of the said court, did choose and present A. B. of the parish of St. G. the Martyr aforesaid, in the county aforesaid, yeoman, then being one of the inhabitants and resiants within the same last-mentioned parish, to be headborough within and for the said parish, and to execute that office for the year then ensuing, and until another inhabitant and resiant in the said parish last mentioned should be chosen and sworn into that office, in the place and stead of the said A. B. for the preserving of the peace of our said lord the king, and for the apprehending of rogues, vagabonds, and other suspicious persons, within the said parish; and for doing and performing of all matters relating to the said office of headborough, he the said A. B. then and there and long before and ever since being an inhabitant and resiant within the same parish, and a fit and proper person to execute the said office as aforesaid; and that he the said A. B. after his being so chosen into the said office, to wit, on, &c. at, &c.

had notice thereof, and, by a certain summons in writing, was required personally to be and appear in the said court on the said ——— day of ———, in the ——— year aforesaid, and then and there take his corporal oath for the due execution of the said office, and to execute the same; which summons, afterwards, to wit, on the same ——— day of ———, in the year aforesaid, at the parish aforesaid, in the county aforesaid, was delivered to and left with him the said A. B.: nevertheless, the said A. B. not regarding his duty in this behalf, but intending and endeavouring the due execution of the said office totally to neglect and omit, after his being so chosen into the said office, and after such notice and summons as aforesaid, to wit, on the said ——— day of ———, in the year aforesaid, did obstinately refuse to appear in the said court, and to take upon himself the said office, and to take the oath for the execution thereof, and he the said A. B. voluntarily, unlawfully, obstinately, and contemptuously, hath hitherto refused, and still doth refuse to be sworn into and execute the same office, to wit, at the parish of ——— aforesaid, in the county aforesaid, to the great hindrance and delay of justice, and against the peace, &c.

209. *Indictment against a gaoler for wilfully permitting one under sentence of transportation for felony to escape (b).*

That at the general quarter session of the peace holden at W. in and for the county of S. on, &c. before T. C. &c.

(b) This was the form of indictment used in the case of *R. v. Burrige*, 3 P. Wms. 479. for aiding and assisting a felon under sentence of transportation to escape, the part after the \* having been added, to render it applicable to the case of a gaoler; the remainder of the original indictment is given in the next precedent. In the C. C. A. 338. is an indictment, as for a misdemeanor, against a gaoler for wilfully permitting a prisoner to

escape, who was under sentence of imprisonment for the term of six months, after a conviction of grand larceny; but it seems that it ought to have been laid as a felony. See *R. v. Burrige*, 3 P. Wms. 497.

An officer who voluntarily suffers an escape, incurs the same degree of guilt, and is liable to the same measure of punishment with the delinquent who has escaped, whether it be treason, felony, or trespass. 1 Hale, 234. 2 Haw,

(*the names of the justices,*) and others their fellows, justices assigned to keep the peace of our said lord the king in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, committed in the said county, by the oath of, (*the grand jury,*) gentlemen, good and lawful men of the county aforesaid, impanelled, sworn and charged to inquire for our said lord the king, for the body of the county aforesaid, it was presented that W. P. late of, &c. (*setting forth the indictment for grand larciny.*) And the jurors aforesaid, now sworn here, upon their oath aforesaid, do further present, that at the same general quarter session of the peace of our said lord the king, held at W. in and for the said county of S. upon, &c. the aforesaid W. P. was duly tried and convicted of the felony above mentioned, charged upon him as aforesaid; and that it was then and there adjudged by the same court, that the said W. P. should be transported for the space of seven years, according to the form of the statutes, as by the record thereof and proceedings remaining amongst the records of the general quarter sessions of the peace of the said county of S. at W. in the county aforesaid, more fully appears. And the jurors aforesaid, now sworn here, upon their said oath, further say, that the aforesaid W. P. being so as aforesaid tried and convicted of the said felony, was then and there, to wit, at the same general quarter session of the peace of our said lord the king, held at W. in and for the county aforesaid, on, &c. committed by the same court to his majesty's gaol at I. in the county aforesaid, upon and in execution of the said judgment for the felony aforesaid. \* And the jurors aforesaid, now sworn here, upon their oath aforesaid, do fur-

c. 19. s. 22. And though it is essential to allege and prove, that the party was *in actual custody*, and that he was guilty of a *specific offence*, it is not material at what stage the escape is suffered, whether between the arrest and commitment of the principal, or before or after his trial, or before or after his attainder. 2 Haw. c. 19. s. 22. Summ. 114.

Dy. 99. 3 P. Wms. 497. But if the defendant has not been convicted, it is necessary to allege and prove, that he had committed a specific felony, 2 Haw. c. 19. s. 14. Cro. Eliz. 52. Het. 73. Summ. 110.; though it seems to be otherwise, when the indictment is for a *negligent escape*. Ib.

ther present, that A. B. late of C. in the county aforesaid, yeoman, then being keeper of his majesty's gaol of I. aforesaid, in the county aforesaid, and having the custody of the said W. P. for the cause aforesaid, before then lately committed to the said gaol for the cause aforesaid, on, &c. *well knowing* that the said W. P. then a prisoner in the said gaol, and in the custody of the said A. B. as aforesaid, had been convicted and committed to the said gaol in execution of and for the felony aforesaid, and did then and there remain so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. did *voluntarily and feloniously permit and suffer* (c) the said W. P. then and there being in the said gaol, in the custody of him the said A. B. and so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, to escape and go at large, whithersoever he would, out of the said gaol and custody; whereby he the said W. P. did then and there (d) *escape from and out of the said gaol*, and go at large, to wit, at, &c. against the peace, &c.

210. *Against a private person for breaking gaol, and assisting a felon to escape, who was under sentence of transportation* (e).

(*As in the preceding pr. to the\*.*) And the jurors aforesaid, now sworn here, upon their said oath, further present, that T. B. late of B. in the county of S. tailor, being a prisoner in his majesty's gaol at I. aforesaid, in the county aforesaid, on, &c. and well knowing that the aforesaid W. P. then also a prisoner in the said gaol, had been convicted of, and committed to the said gaol in execution of and for the felony aforesaid, and did then and there remain so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, afterwards, that is to say, on, &c. with force and

(c) Essential, see 2 Haw. c. 19. s. 14.

(d) This is essential, see 2 Haw. c. 19. s. 14. c. 21. s. 3. Keil. 78. B. Escape, 52.

(e) A private person, who having an offender in lawful custody suffers an escape, incurs the same degree of guilt with an officer. 2 Haw. c. 20. s. 1.

arms, at I. aforesaid, in the county aforesaid, did wilfully and feloniously rescue the said W. P. then and there being in the said gaol so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, from and out of the said gaol, so that he the said W. P. did make his escape out of the said gaol, and then and there did wilfully and feloniously aid and assist the said W. P. then and there being in the said gaol so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, in making his escape out of the said gaol; and that the said W. P. by the aid and assistance of him the said T. B. did then there make his escape from and out of the said gaol, and go at large, to wit, at I. aforesaid, in the county aforesaid. And the jurors aforesaid, now sworn here, upon their said oath further say, that the said T. B. being a prisoner in his majesty's said gaol at I. aforesaid, in the county aforesaid, on, &c. afterwards, that is to say, on the same ——— day of ———, in the ——— year aforesaid, with force and arms, at I. aforesaid, in the county aforesaid, did wilfully and feloniously (f) break the said gaol, and rescue the said W. P. then and there being in the said gaol so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, from and out of the said gaol, so that he the said W. P. did make his escape out of the said gaol, and then and there did wilfully and feloniously aid and assist the said W. P. then and there be-

(f) At common law it was felony to break out of a gaol or prison, whether the cause of commitment was criminal or civil. 1 Hale, 612. 2 Bac. Ab. 635. But by the stat. 1 E. 2. st. 2. it is enacted, "that none from thenceforth that breaketh prison shall have judgment of life or member for breaking of prison only, *except* the cause, for which he was taken and imprisoned, did require such judgment, if he had been convict thereon, according to the law and custom of the realm;" and, therefore, it is

necessary in an indictment for this offence, to shew that the party was in prison for an offence requiring judgment of life or member. 2 Haw. c. 18. s. 20. To allege generally, *quod felonice fregit prisonam*, is insufficient. *Ib.* see p. 155, 6. But to break from any lawful custody is punishable as an high misprision by fine and imprisonment, though the offence, by the intervention of the stat. does not amount to felony. 2 Haw. c. 18. s. 30. The same rules apply as to an indictment for an escape. *Ib.*

ing in the said gaol, so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, in making his escape out of the said gaol; and that the said W. P. by the aid and assistance of him the said T. B. did then and there make his escape from and out of the said gaol, and go at large, to wit, at I. aforesaid, in the county aforesaid, against the peace, &c.

211. *Indictment at common law against a constable for negligently permitting a man to escape that was committed for a rape.*

That on, &c. at, &c. one J. S. was brought by one J. B. then being one of the constables of the same parish, before A. C. esq. then and yet being (*allege that he was a justice, as in pr.* 190,) and the said J. S. then and there was charged by one D. T. spinster, upon the oath of the said D. with having feloniously ravished the said D. against her will; and that the said J. S. then and there was examined before the said A. C. the justice aforesaid, touching the aforesaid offence to him as above charged; upon which the said A. C. so being such justice as aforesaid, did then and there make a certain warrant under his hand and seal, in due form of law, bearing date, &c. directed to the keeper of, &c. commanding him the said keeper, or his deputy, that he should receive into his custody the said J. S. brought before him, and charged upon the oath of the said D. T. with the premises above specified; and the said justice by the aforesaid warrant did command the said keeper of, &c. to safely keep him there until he by due course of-law should be discharged; which same warrant, afterwards, to wit, on, &c. at, &c. was delivered to the said J. B. then and there being one of the constables of the same parish as aforesaid; and then and there having the said J. S. in his custody for the cause aforesaid (g),

(g) Every indictment for an escape must shew, that the party was actually in the defendant's custody for some crime, or upon some commitment upon suspicion, and it is not sufficient to say, that he was in the defendant's custody, AND charged with such a crime; for that is no allegation, that he was in custody upon that charge, 2 Haw. c. 97. s. 14,

and the said J. B. then and there was required and commanded by the said A. C. the aforesaid justice, immediately to convey the said J. S. to the said gaol of, &c. and to deliver him the said J. S. to the keeper of the said gaol, or his deputy, together with the warrant aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. B. late of, &c. baker, afterwards, to wit, on, &c. then as aforesaid, being one of the constables of the said parish, and then having the said J. S. in his custody for the cause aforesaid, at, &c. \* the said J. S. out of the custody of him the said J. B. unlawfully and negligently did permit to escape, and go at large whithersoever he would, whereby the said J. S. did then and there escape and go at large whithersoever he would, to wit, at, &c. against the peace, &c.

*212. Indictment at common law against a constable for negligently permitting a man to escape, who was arrested by him for a misdemeanor (h).*

That on, &c. at, &c. one S. C. came before A. K. esq. (alleging that he was a justice as in pr. 190,) and the said S. C. did then and there, on his oath, before the same justice, charge, accuse, and give information against one W. M. of the parish aforesaid, in the county aforesaid, yeoman, for a certain misdemeanor, in taking fish out of the pond of M. N. the owner thereof, without his consent, at O. in the county aforesaid; whereupon he the said A. K. as such justice aforesaid, did then and there, to wit, at, &c. make a certain warrant, under his hand and seal, in due form of law, directed to the constable or headborough of the parish of P. aforesaid, in the county aforesaid, thereby requiring them to take the body of the said W. M. and bring him before the said A. K. the justice aforesaid, to answer to such matters and things as should be alledged against him touching the said misdemeanor; which said warrant, afterwards, to wit, on the same day and year aforesaid, at, &c. was delivered to one T. W. then being one of the constables of the said parish of P. in due form of law to be executed; by virtue of which said warrant the said T. W. afterwards, to wit, on, &c. at, &c. did take and arrest the body of the said W. M. and him

(h) See the notes, p. 600, 1, 2, 3, 4.



the said W. M. in his custody for the cause aforesaid, had; nevertheless, the said T. W. of the said parish of P. in the county aforesaid, yeoman, afterwards, to wit, on, &c. the duty of his office in that respect not regarding, at, &c. (*Conclude as in the last pr. from the \*.*)

213. *Indictment against the turnkey of a common gaol for a misdemeanor, in aiding a prisoner, committed by virtue of a justice's warrant for petit larciny, to make his escape.*

That on, &c. A. B. esq. then being one of the justices, &c. (*as in pr. 190, from \* to \*\**), in due form of law did make his warrant of commitment under his hand and seal, to wit, at T. in the said county of C. bearing date the same day and year aforesaid, directed to the keeper of the common gaol in and for the said county of C. by which said warrant of commitment the said keeper was required to receive into his custody the body of C. D. who was therewith sent to him the said keeper (the said C. D. having been brought before him the said justice, and charged upon the oath of E. F. with having feloniously stolen and carried away a ————— of him the said E. F. of the value of ten-pence, at T. aforesaid, in the county aforesaid,) and him safely keep until the then next general quarter-session of the peace to be holden in and for the said county of C. or until he should be thence delivered by due course of (i) law, as by the same warrant more fully appears; by virtue of which said warrant of commitment, afterwards, to wit, on, &c. at, &c. G. H. then being keeper of the common gaol of the said county of C. did receive the said C. D. into his custody in the said common gaol there situate. And the jurors aforesaid, upon their oath aforesaid, do further present, that D. M. late of the castle of C. aforesaid, in the county aforesaid, labourer, well knowing the premises, and not regarding the laws of this realm, nor fearing the pains and penalties therein contained, afterwards, and whilst the said C. D. was a prisoner as aforesaid, to wit, on, &c. with force and arms, in the gaol aforesaid, at, &c. in the county aforesaid, unlawfully, voluntarily, and unjustly did take, and cause to be taken, certain iron chains and

(i) As the warrant may be.

fetters, then affixed and fastened upon the legs of the said C. D. from and off the same, he the said C. D. then being such prisoner as aforesaid; and also did permit him the said C. D. to go out at a certain back-door of and belonging to the said gaol, and over a certain wall surrounding and inclosing the same, and to go at large out of the said gaol whithersoever he would (he the said D. M. then and there having the custody and keeping of the keys of and belonging to the said gaol.) And the jurors aforesaid, upon their oath aforesaid, do say, that the said D. M. then and there, in manner and form aforesaid, was aiding and assisting the said C. D. to make his escape from and out of the said prison, against the peace, &c.

*Second count.*) That the said C. D. on, &c. was lawfully committed to the custody of the said G. H. then being keeper of his said majesty's gaol of and for the said county of C. to wit, at, &c. aforesaid, in the said county of C. by virtue of a certain warrant of commitment duly made under the hand and seal of the said A. B. then being such justice as aforesaid, bearing date the same day and year last aforesaid, upon and in pursuance of a certain charge upon oath made by the said E. F. against the said C. D. to and before him the said A. B. being such justice as aforesaid, alleging, that the said C. D. had feloniously stolen and carried away ——— of him the said E. F. of the value of ——— at T. aforesaid; and by which said last-mentioned warrant the said G. H. was required safely to keep the said C. D. until the then next general quarter-session of the peace to be holden in and for the said county of C. or until he should be thence delivered by due course of law, as by the said last-mentioned warrant more fully appears. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said D. M. so having the custody and keeping of the said keys as aforesaid, and well knowing the said last-mentioned premises, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, in the county aforesaid, unlawfully, voluntarily, and contemptuously did permit and suffer the said C. D. (then being a prisoner in the said gaol, under the custody of the said G. H. by virtue of the said last-mentioned warrant, for the cause last aforesaid,) to escape, &c. (*as in pr. 211.*) without the authority or consent of the said G. H. being such keeper as aforesaid, and without any lawful authority whatsoever. (*Conclusion as before.*)

214. *Indictment against a prisoner confined in gaol for debt (by virtue of a writ issued out of the Common Pleas, and the sheriff's warrant to the gaoler,) for attempting to break the gaol, in order to make his escape.*

That on, &c. at, &c. T. S. esquire, then being sheriff of the county aforesaid, did, in due form of law, make his certain warrant, under his hand and seal, bearing date the same day and year aforesaid, and directed to the keeper of the gaol of the said county, and also to J. C. and J. E. his bailiffs, and thereby, and by virtue of a certain writ of our sovereign lord the king to him the said sheriff directed, he the said sheriff did command them the said keeper of the gaol aforesaid and also the said bailiffs, and every of them, jointly and severally, that they, some or one of them, should take J. L. if he should be found in the said sheriff's bailiwick, and him the said J. L. safely keep, so that he the said sheriff might have his body before the said justices of our said lord the king at Westminster, in eight days of St. Hilary, to satisfy R. S. as well of a certain debt of twenty pounds, which the said R. S. had recovered against him in the court of our said lord the king, before his justices at Westminster, as also of five pounds, which in our said lord the king's same court were awarded to the said R. S. for his damages which he had sustained by reason of his detaining the said debt whereof the said J. L. was convicted, as by the same warrant more fully appears. And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on, &c. at, &c. and within the bailiwick of the said sheriff, the aforesaid J. L. was arrested, and conveyed into, and kept and detained in, the gaol of our lord the king, of and for the county aforesaid, situate and being at the parish aforesaid, in the county aforesaid, according to the command of the aforesaid writ and warrant, for the cause in the aforesaid warrant expressed, there to remain until he should be thence discharged by due course of law. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. L. late of the parish aforesaid, in the county aforesaid, labourer, afterwards, to wit, on, &c. at the parish aforesaid, in the county aforesaid, (then and there being in the custody of L. S. keeper of the gaol of our lord the king of the county aforesaid, for the cause in the writ and warrant

aforesaid specified,) with force and arms, unlawfully, wilfully, and injuriously, did attempt to break the aforesaid gaol, and to escape and go at large where he would, (by then and there cutting and sawing two iron bars of the said gaol, and also by then and there breaking, cutting, and removing a great quantity of stone, parcel of the wall of the aforesaid gaol,) against the peace, &c.

215. *Indictment against a constable for wilfully permitting a prostitute, committed to his care by a watchman, to escape before she was taken to a justice.*

*Middlesex.* That one R. M. late of the parish of Saint James, within the liberty of Westminster, in the county of M. labourer, being lawfully appointed one of the nightly watchmen of and for the said parish, and being in his said office and place, and duly performing his duty of such watchman there, he the said R. M. at an unreasonable time, to wit, between the hours of one and two of the clock in the morning, at the parish aforesaid, in the liberty and county aforesaid, did apprehend and take into his custody one M. P. then and there being a loose, idle, lewd, and disorderly person, and a common street-walker, and being then and there found behaving herself riotously, and walking the streets there to pick up men, in breach of his majesty's peace; and did then and there take and convey the said M. P. in his custody, to a certain prison, called the watch-house, in the said parish; and did on that occasion there deliver her into the custody of one J. B. who then and there was one of the constables of the said parish, and then and there being in the execution of his said office of such constable, as the head of the nightly watch of the said parish; and did on that occasion then and there leave her the said M. P. in charge with the said J. B. so being such constable as aforesaid, and in the execution of his said office as aforesaid; and did then and there charge and request the said J. B. so being such constable, and in the execution of his said office as aforesaid, to keep and detain the said M. P. so being such loose, idle, lewd, and disorderly person, and a common street-walker, who had been found walking the streets there to pick up men as aforesaid, in his custody, until the said M. P. could be safely and conveniently carried and conveyed before some one of his majesty's justices, assigned to keep the peace of our said

lord the king, in and for the said liberty, in the county aforesaid, there to be dealt with by such justice, according to due form of law, for her said offence and breach of the king's peace; yet the said J. B. late of, &c. so being constable as aforesaid, and *well knowing the premises, but (a)* not regarding the duty of his office as such constable as aforesaid, then and there, unlawfully and wilfully discharged her the said M. P. from and out of his custody, before she had been carried before any justice of the peace of our said lord the king, to be dealt with according to due form of law, and would not keep or detain her in his custody for the purpose aforesaid, but wilfully suffered and permitted her the said M. P. to escape and go at large whithersoever she would (*conclusion as in pr. 209.*)

216. *Indictment at common law for assisting a prisoner to escape out of prison, charged with a forfeiture to the king, upon a writ issued out of the Exchequer.*

That heretofore, to wit, on, &c. there issued out of the Court of Exchequer of our lord the king, (the said court then and still being at Westminster, in the county of Middlesex,) a certain writ of our said lord the king, directed to his then sheriff of the county of S. by which said writ our said lord the king commanded the said sheriff, that he should not omit by reason of any liberty, but enter the same, and take I. R. by his body, wheresoever he the said sheriff should find him within his bailiwick, and him safely and securely keep, so that he the said sheriff might have his body before the barons of the Exchequer of our said lord the king, at Westminster, on, &c. to answer to our said lord the king, concerning certain articles whereof he was impeached, on a certain information exhibited before the barons of our said lord the king by his attorney-general, for a forfeiture of two thousand three hundred and thirty-two pounds, for an offence in the information aforesaid mentioned, and further to do and receive in the premises what the said court then and there should see fit to order, and that the said sheriff should have then and there that writ; and that the said writ afterwards, and before the return thereof, to wit, on, &c. at, &c. was delivered to A. B. esquire, then sheriff of

(a) Not in the original, C. C. A. 342.

the county of S. aforesaid, in due form of law to be executed, by virtue of which said writ, he the aforesaid J. R. was then and there taken and imprisoned by him the said sheriff in the gaol of our said lord the king, commonly called the new gaol, in Southwark, situate in the parish of St. George, Southwark, aforesaid, in the said county of S. to answer to our said lord the king of and concerning the premises in the said writ above specified. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. R. being so in the said gaol in custody as aforesaid, for the cause aforesaid, one R. W. late of, &c. well knowing the premises, but contriving and intending to procure the escape of him the said J. R. out of the said gaol, afterwards, to wit, on, &c. at, &c. with force and arms, unlawfully, knowingly, and advisedly did bring, and cause to be brought and delivered, to the said J. R. (then and there being in the gaol aforesaid, in the custody of the said A. B. esquire, then sheriff of the said county of Surrey, for the cause in the writ above specified,) one rope and two iron hooks, to the intent and purpose that the said J. R. might and should thereby be enabled to make his escape out of the said gaol. And the jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the contrivance and intention of the said R. W. and by means of the said rope and hooks, and by the procurement of the said R. W. he the said J. R. afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in the county of S. then and there being in the custody of the said sheriff, in the said gaol, for the cause in the writ above specified, with force and arms, against the will, and without the license or consent of the said sheriff, or of the then gaoler of the said gaol, unlawfully and voluntarily did escape and go at large out of the said gaol from the custody of the said A. B. then sheriff of the said county of S. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said R. W. on, &c. with force and arms, at the parish aforesaid, in the said county of S. wilfully, advisedly, unlawfully, and against the will, and without the license or consent, of the said then sheriff of the said county of S. and also against the will, and without the license or consent, of the then gaoler of the said gaol of our said lord the king of his said county of S. did aid, abet, comfort, and assist the said J. R. so being in the

said gaol as aforesaid, for the cause aforesaid, in making his escape from the said gaol and custody of the said sheriff, in contempt of our said lord the king and his laws, and against the peace, &c.

217. *Indictment for conveying files into a prison in order to facilitate the escape of a prisoner (b).*

That on, &c. at the parish of M. in the borough of Stafford, in the county of Stafford, F. N. esquire, then being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in

(b) By stat. 16 Geo. 2. c. 81. s. 1. if any person shall by any means whatsoever be aiding or assisting to any prisoner to attempt to make his escape from any gaol, although no escape be actually made, in case such prisoner then was attainted or convicted of treason, or any felony, except petit larciny, or lawfully committed to or detained in any gaol for treason, or any felony, except petit larciny, expressed in the warrant of commitment or detainer, every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged guilty of felony, and shall be transported for seven years; and in case such prisoner then was convicted of, committed to, or detained in any gaol for petit larciny, or any other crime, not being treason or felony, expressed in the warrant of commitment or detainer as aforesaid, or then was in gaol upon any process whatever, for any debt, &c. amounting to one hundred pounds, every person so offending, and being thereof lawfully convicted, shall be deem-

ed guilty of a misdemeanor, for which he shall be liable to be fined and imprisoned.

s. 2. If any person shall convey, or cause to be conveyed, into any gaol or prison, any vizor or other disguise, or any instrument or arms, proper to facilitate the escape of prisoners, and the same shall deliver, or cause to be delivered, to any prisoner in any such gaol, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper or under-keeper of any such gaol or prison, every such person, although no escape, or attempt to escape, be actually made, shall be deemed to have delivered such vizor, &c. with an intent to aid and assist such prisoner to escape, or attempt to escape; and in case such prisoner then was attainted or convicted of treason, or any felony, except petit larciny, or lawfully committed to or detained in any gaol for treason, or any felony, except petit larciny, expressed in the warrant of commitment or detainer, every person so offending, and being

and for the said county of Stafford, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, in due form of law, did make *his warrant of commitment*, under his hand and seal, bearing date the same day and year aforesaid, directed (*as in the warrant,*) to the keeper of his majesty's gaol in Stafford, (the same being the common gaol of our said lord the king in and for the county of Stafford aforesaid, situate in the parish and borough aforesaid;) by which said warrant of commitment the said justice of the peace did require the said keeper to receive into his custody the body of one J. L. who was therewith sent to him the said keeper, (the said J. L. having been brought before him the said justice, and charged upon the oath of S. S. esquire, and J. S. *with having feloniously stolen* (c), taken, and carried away, from and out of a

thereof lawfully convicted, shall in like manner be adjudged guilty of felony, and be transported for seven years; but in case the prisoner, to whom or for whose use such vizor, &c. shall be so delivered, then was convicted, committed, or detained for petit larciny, or any other crime, not being treason or felony, expressed in the warrant of commitment or detainer, or upon any process for any debt, &c. amounting to one hundred persons, every such person so offending, and being thereof lawfully convicted, shall be adjudged guilty of a misdemeanor, for which he shall be liable to a fine and imprisonment.

s. 3. If any person shall aid or assist any prisoner to attempt to make his escape from any constable, headborough, tythingman, or other officer or person who shall then have the lawful charge of such prisoner, in order to carry him to gaol by virtue of a warrant of com-

mitment for treason or any felony, (except petit larciny,) expressed in such warrant; or if any person shall be aiding or assisting to any felon to attempt to make his escape from on board any boat, ship, or vessel carrying felons for transportation, or from the contractor for the transportation of such felons, his assigns, or agents, or any other person to whom such felon shall have been lawfully delivered, in order for transportation; then every person so offending, and being lawfully convicted thereof, shall be adjudged guilty of felony, and shall be transported for seven years.

s. 4. Prosecution to be commenced within one year.

s. 5. Persons ordered for transportation, and returning, &c. felony.

(c) A commitment on *suspicion only* will not warrant a conviction under this act. Greeniff's case, Leach, 401.



barn of him the said S. S. situate at T. in the said county of Stafford, a certain quantity of barley, of the value of ten shillings, the property of him the said S. S.) and him safely keep, until he should be discharged by due course of law (d), as by the said warrant more fully appears; by virtue of which said warrant of commitment he the said J. L. afterwards, to wit, on the same day and year aforesaid, was conveyed, committed, and delivered to his majesty's said gaol, at the parish aforesaid, in the borough and county aforesaid, for the said cause in the said warrant of commitment mentioned and expressed, to wit, for grand larciny, and was kept and detained therein, under the custody of W. S. then being keeper of the said gaol, for the cause aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that J. B. late of the said parish of M. in the borough of Stafford aforesaid, in the county aforesaid, labourer, well knowing the premises, and not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, afterwards, on, &c. with force and arms, at, &c. feloniously did convey, and cause to be conveyed, into the said gaol, two steel files, being instruments proper to facilitate the escape of prisoners; and the same files, being such instruments as aforesaid, then and there feloniously did deliver, and cause to be delivered, to the said J. L. (he the said J. L. then and there being a prisoner in the said gaol, and there lawfully detained for the felony and larciny aforesaid, in the said warrant of commitment above mentioned and expressed,) without the consent or privity of the said W. S. then being keeper of the said gaol (under W. A. esquire, then sheriff of the said county of Stafford,) or any under-keeper of the same gaol; which said files, being such instruments as aforesaid, were then and there so conveyed into the said gaol, and delivered to the said J. L. as aforesaid, with a felonious intent to *aid and assist* (e) the said J. L. so being such prisoner and in custody as aforesaid, to escape, and attempt to escape, from and out of the same gaol, against the form, &c. and against the peace, &c.

(d) As in the warrant.

(e) In an indictment for *aiding and assisting*, &c. it is not necessary expressly to allege

an attempt to escape, since it is implied in these words. See Tilley's case, Leach, 759. and the Pr. Trem. 244. 246.

## RESCUES, &amp;c.

**218. Indictment against two for a rescue, one of them being in custody of an officer of the marshal's court upon process, &c.**

That on, &c. our said lord the king, by his writ issued out of the court of our said lord the king of his palace of Westminster, under the seal of the said court, bearing date the same day and year aforesaid, directed to the bearers of the verge of the household of our said lord the king, officers and ministers of the court of our said lord the king of his palace of Westminster, and every of them, did command them, and every of them, that they should take, or one of them should take, by their bodies, R. A. and W. C. if they should be found within the jurisdiction of the court aforesaid, and them safely keep, so that they might have, or one of them might have, their bodies before the judges of the court aforesaid, at the then next court of the palace of our said lord the king of Westminster aforesaid, on, &c. then next following to be holden at S. in the county of Surrey, to answer T. W. of a plea of trespass upon the case, to the damage of the said T. W. of £—; which said writ afterwards, and before the delivery thereof, &c. (*state the indorsement, &c. as in pr. 142. (f),*) which same writ so indorsed, afterwards, and before the return of the same, to wit, on, &c. at, &c. and within the jurisdiction of that court, was delivered to one G. N. then one of the bearers of the verges of our said lord the king, officers and ministers of the court of our said lord the king, to be executed in due form of law; by virtue of which said writ, the said G. N. afterwards, and before the return thereof, to wit, on, &c. at, &c. and within the jurisdiction of that court, did take and arrest the body of the said R. A. in the writ aforesaid named, and him the said R. A. in his custody, by virtue of the said writ, then and there had; and that the said R. A. late of the parish aforesaid, in the county aforesaid, yeoman, and C. D. late of the same, black-

(f) See the note, p. 399. and the stat. 12 G. 1. c. 29. and 19 G. 3. c. 20.

smith, afterwards, to wit, on, &c. with force and arms, at, &c. in the county and within the jurisdiction aforesaid, in and upon the said G. N. then and there as aforesaid being one of the bearers of the verges of the household of our said lord the king, officers and ministers of the court aforesaid, and having the said R. A. in custody for the cause aforesaid, and in the due execution of his said office, then and there also being, did make an assault, and him the said G. N. then and there did beat, wound, and ill-treat; and that the said C. D. him the said R. A. out of the custody of the said G. N. and against the will of the said G. N. then and there, with force and arms, unlawfully did rescue and put at large to go whithersoever he would; and that the said R. A. himself out of the custody of the said G. N. and against the will of the said G. N. then and there, with force and arms, unlawfully did rescue and escape and go at large whithersoever he would, to the great hindrance and obstruction of justice, in contempt of our said lord the king and his laws, to the great damage of the said G. N. and against the peace, &c. (*Add a count for a common assault, as in pr. 34.*)

**219. Indictment against several for rescuing a person taken upon a bill of Middlesex.**

That on, &c. a certain precept, commonly called a bill of Middlesex, was issued out of the court of our said lord the king, before the king himself, (the same court then and still being at Westminster, in the said county of Middlesex,) by which it was commanded to the sheriff of Middlesex that he should take (*as in the precept,*) so that he might have their bodies before our said lord the king at Westminster, on Wednesday next after fifteen days of Easter, to answer to B. H. of a plea of trespass, and also to a bill of him the said B. H. to be exhibited against the aforesaid H. O. for thirty pounds, upon premises, according to the custom of the said court; which said precept afterwards, &c. (*sic the indorsement as in pr. 142.*) which same precept afterwards, and before the return thereof, to wit, on, &c. at, &c. was delivered to A. B. and C. D. esquires, sheriff of the county aforesaid, to be executed in due form of law; which said A. B. and C. D. sheriff of the county aforesaid, by virtue of the precept aforesaid, afterwards, and before the return thereof, to wit, on, &c.

at, &c. did make a certain warrant of him the said sheriff, under his seal, directed to J. D., P. C., and R. R. his bailiffs of the hundred of Ossulston, in the county aforesaid, by which he commanded them, and every of them, jointly and severally, that they should take, or one of them should take, the said H. O. in the precept above named, to answer to the said B. H. of the plea of trespass aforesaid, and that the said J. D. in the warrant aforesaid named, afterwards, and before the return of the precept aforesaid, to wit, on, &c. by virtue of the precept and warrant aforesaid, at the parish of F. within the hundred aforesaid, in the county aforesaid, did take and arrest the said H. O. in the precept aforesaid above mentioned, according to the command of the precept and warrant aforesaid; upon which the said H. O. late of the said parish of Fulham, in the county aforesaid, yeoman, J. F. late of the same, yeoman, and M. W. late of the same, spinster, afterwards, to wit, on, &c. with force and arms, at, &c. in and upon the said J. D. then being one of the bailiffs of the said sheriff of the county aforesaid of the hundred of Ossulston aforesaid, and in the due execution of the precept and warrant aforesaid, and in the peace of God and our said lord the king then and there also being, did make an assault, and him the said J. D. then and there did beat, wound, and ill-treat: and that the said J. F. and M. W. him the said H. O. out of the custody, and against the will, of the said J. D. then and there unlawfully did rescue and put at large to go whithersoever he would; and that the said H. O. himself out of the custody, and against the will, of the said J. D. then and there unlawfully did rescue and escape at large whithersoever he would, to the great hindrance and obstruction of justice, in contempt of our said lord the king and his laws, to the great damage of the said J. D. and against the peace, &c. (*Add a count for a common assault.*)

*220. Indictment for rescuing goods distrained for rent.*

That on, &c. one M. P. of the parish of S. in the county of M. in due form of law did take and distrain (*set out the property and its value*) of the goods and chattels of one A. H. widow, then being in a certain lodging room in the dwelling-house of the said M. P. situate in the parish and county aforesaid, which same distress was taken by him the said M. P. for the sum of three pounds and

ten shillings, then due for rent, for one whole year, in arrear from the said A. H. to him the said M. P. for the lodging aforesaid; and that the said M. P. the said goods and chattels then and there had and detained in his custody, for the cause aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that A. B. late of, &c. afterwards, to wit, on, &c. with force and arms, at, &c. in the county aforesaid, the said goods and chattels, so as aforesaid by the said M. P. taken and distrained, and in the custody of him the said M. P. then being, from and out of the custody, and against the will of him the said M. P. then and there unlawfully and with force and violence did rescue, take, and carry away, (the said sum of three pounds and ten shillings, for the said rent in arrear, as aforesaid due, nor any part thereof, not being then paid,) and other wrongs to the said M. P. then and there did, to the great damage of the said M. P. and against the peace, &c.

**221.** *Indictment against a felon, for being at large before the expiration of his term of transportation (g).*

That at the general session of the delivery of the gaol of our lord the king of Newgate, holden for the county of Middlesex, at Justice-hall, in the Old Bailey, in the

(g) By stat. 16 Geo. 2. c. 15. s. 1. "if any felon, or other offender, already ordered, or hereafter to be ordered, for transportation, or who hath already, or hereafter shall agree, to transport him or herself, on certain conditions, to any of his majesty's colonies and plantations in America, either for life or any number of years, shall be afterwards at large within any part of the kingdom of Great Britain, without some lawful cause, before the expiration of the term for which he, she, or they were so ordered to be transported, or had so agreed to transport him or

herself; all and every such person or persons, being thereof lawfully convicted, shall suffer death, as in cases of felony, without benefit of clergy.

Sec. 2. enacts, that offenders shall be tried as mentioned in stat. 6 Geo. 1. c. 23. which, by sec. 7. directs, that they may be tried either before justices of assize, oyer and terminer, or gaol-delivery for the county, city, or liberty, where he, she, or they shall be apprehended and taken, or before any of those justices for that county, city, or place, from whence he, she, or they were ordered to be transported;

suburbs of the city of London, on, &c. before, &c. and others their fellows, justices of our said lord the king,

and that the certificate\* of conviction and order, &c. by the clerk of assize, &c. shall be sufficient proof that such persons have before been convicted and ordered to be transported. And by s. 5. of the same stat. persons contracting for transporting such felons may secure them as they think fit; and those who rescue, &c. shall suffer death.

Sec. 3. of the st. 16 Geo. 2. allows a reward of twenty pounds to any person who shall discover, apprehend, and prosecute to conviction of felony without benefit of clergy, any such offender so found at large within the kingdom of Great Britain, to be paid in like manner as is directed respecting highwaymen. Vide also stat. 4 Geo. 1. c. 11. and 8 Geo. 3. c. 15. The latter gives power to the judge to make an order of transportation after the assizes are over, where the felon has been capitally convicted, reprieved, recommended to mercy, and pardoned upon condition of transportation†.

By stat. 19 Geo. 3. c. 74. s. 1. when any person shall be lawfully convicted of any grand or petit larciny, or other crime, for which he or she shall be li-

able to be transported to any of his majesty's colonies or plantations in America, the court may order such person to be transported to any parts beyond the seas, whether the same be in America or elsewhere.

By s. 2. it is enacted, "that when any such person, who hath already been, or shall hereafter be convicted, shall, in consequence thereof, be ordered to be transported to any parts beyond the seas, or if his majesty, his heirs, and successors, shall hereafter be graciously pleased to extend the royal mercy to any offender convicted or attainted of any felony by which he or she is excluded from the benefit of clergy, or of such statutes as are equivalent thereunto, upon the condition of transportation to any parts beyond the seas as aforesaid, then, and in any such cases, all laws, statutes, usages, and customs, now in force with regard to the transportation of criminals to any of his majesty's colonies or plantations in America, and their punishment for being afterwards at large, within any part of the kingdom of Great Britain, before the expiration

\* The act directs, that this shall "briefly, and in a few words, contain the effect and tenor," &c. which shews that it is not necessary to set out the whole record of conviction in an indictment.

† By the same statute, such persons found at large, &c. shall suffer death; and those apprehending, &c. shall have a like reward as before mentioned. See Madan's case, Leach, 993.

assigned to deliver the gaol of our said lord the king of Newgate of the prisoners therein being, E. L. late of, &c.

of the several terms for which they were ordered to be transported, or had agreed to transport themselves, and particularly the several provisions contained in an act made in the fourth year, &c. (it here sets out the titles of the before-mentioned acts of 4 Geo. 1. 6 Geo. 1. 16 Geo. 2. and 8 Geo. 3.) shall take place, be in force, and endure with regard to the transportation of all such offenders as aforesaid, to any part or parts beyond the seas, and with regard to their punishment for being afterwards at large in this kingdom before the expiration of their respective terms, in like manner as if the same had been repeated and specially inserted in this act."

s. 3. When any person is convicted of felony for which he shall be liable to be burnt in the hand, the court may, instead thereof, impose on him a moderate fine, or order him to be whipped\*: but, by s. 4. the act shall not abridge the power vested in the court of imprisoning offenders.

s. 5. His majesty is hereby empowered to appoint supervisors to erect penitentiary houses in any one of the counties of Middlesex, Essex, Kent, or Surry, for the purpose of confining and employing convicts therein.

Continued by several acts, see 53 G. 3. c. 39.

By 24 Geo. 3. c. 56. s. 6. it shall be lawful for his majesty, by an order in writing, to be notified by one of his principal secretaries of state, or for any three or more justices of the peace acting in, &c. to direct the removal of any male offender, who shall be under sentence of death, but reprieved during his majesty's pleasure, or under sentence or order of transportation, and who, having been examined by an experienced surgeon or apothecary, shall appear to be free from any putrid or infectious distemper, and fit to be removed from the gaol or prison in which such offender shall be confined, to such place of confinement within England, or the dominion of Wales, either at land, or on board any ship or vessel in the river Thames, or any navigable or other river, or within the limits of any port of England or Wales, as his majesty, or any three of such justices, authorized as aforesaid, shall from time to time appoint, under the management of any overseer to be appointed, &c.

By s. 1. his majesty in council, may appoint to what place beyond the seas felons shall be sent.

Continued by several subsequent acts, see 53 G. 3. c. 39.

\* Manslaughter excepted.

according to due course of law was tried, for that he, (*set out the indictment*,) and thereupon, by a certain jury of the country, between our said lord the king and the said E. L. in that behalf then and there, to wit, on the — day of —, in the — year aforesaid, at and in the court of the said session, so holden as aforesaid, duly taken, he the said E. L. was duly convicted of the said felony upon the indictment aforesaid; and thereupon the aforesaid E. L. by the above-named justices of our said lord the king, assigned to deliver his gaol of Newgate aforesaid of the prisoners therein being, was ordered to be “transported beyond the seas for and during the term of seven years,” as by the record thereof more fully appears; and that he the said E. L. afterwards, to wit, on the — day of —, in the said — year of the reign of our said lord the king, with force and arms, feloniously, and without any lawful cause whatsoever, was at large within this kingdom of Great Britain (*h*), to wit, at, &c. in the county aforesaid, before the expiration of the term of seven years, for which he the said E. L. was so ordered to be transported as aforesaid, against the form of the statute, &c. and against the peace, &c. (*i*).

**222. *Indictment against a felon under sentence of transportation, for being at large before the expiration of the term, after a conviction at the quarter sessions.***

That at the general quarter session of the peace of our lord the king, holden at Lancaster, in and for the county palatine of Lancaster, on Tuesday, to wit, the — day of —, in the 51st year of the reign of our sovereign lord George the third, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of

(*h*) See note (*k*), p. 623.

(*i*) One Benjamin Fisher was tried on an indictment formed in this manner at Worcester summer assizes, 1790, convicted, and condemned to die.

See an indictment for being at large in Great Britain after sentence of death, respite, and order of transportation, which was made at the assizes next after the trial. *Cro. Cir. Ass.* 411.



the faith, before E. H. and E. T. esquires, and others their companions then and there present, justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the same county perpetrated, that same general quarter session of the peace of our said lord the king, was adjourned by the aforesaid justices of our said lord the king, in that court being, until Thursday, to wit, the — day of the same month of —, in the 51st year of the reign aforesaid, to be holden in Preston, in Amounderness, in and for the same county, to do further as the court there should consider. And on the said Thursday, the — day of —, aforesaid, in the year aforesaid, at the same general quarter session of the peace of our said lord the king, holden by the said adjournment at Preston aforesaid, in and for the said county, before J. P. &c. and others their companions, then and there present, justices of our said lord the king, &c. that same general quarter session of the peace of our said lord the king, holden by adjournment as aforesaid, was further adjourned by the same last-mentioned justices of our said lord the king, in that court being, until Monday, to wit, the — day of the same month of —, in the 51st year of the reign aforesaid, to be holden at Wigan, in and for the said county, to do further as the court there should consider, and on the said Monday, the — day of — aforesaid, in the year aforesaid, the same sessions of the peace of our said lord the king, was holden by the adjournment last aforesaid, at Wigan aforesaid, in and for the said county, before R. G. &c. esquires, and other their companions, then and there present, justices, &c. at which said session of the peace of our said lord the king, holden by the said last-mentioned adjournment at Wigan aforesaid, in and for the said county, the said — day of —, in the 51st year of the reign aforesaid, upon the oaths of W. H. &c. (*the names of the grand jury,*) gentlemen, good and lawful men of the county of Lancaster aforesaid, then and there sworn and charged to inquire for our said lord the king, and for the body of the said county, it was presented that one W. W. late of the township of O. in the county of L. labourer, on the — day of —, in the 51st, &c. (*here set out the indictment for simple larciny,*) whereupon the sheriff

of the said county was commanded to apprehend and take the body of the said W. W.; and thereupon, at the same general quarter session of the peace, holden by the said last-mentioned adjournment, at Wigan aforesaid, in the county aforesaid, the said — day of —, in the 51st year of the reign aforesaid, before the said justices of our said lord the king last above named, came the said W. W. in the custody of the governor of the house of correction in Preston aforesaid (into whose custody, in the same prison, he the said W. W. had been before committed,) and having had hearing of the indictment aforesaid, was instantly asked to speak to the said court, how he would acquit himself of the premises aforesaid, in the indictment aforesaid, so charged and imposed on him, who said that he was guilty of the felony aforesaid, in the indictment aforesaid, on him so charged and imposed, as by the form of the said indictment was charged and supposed to be, and upon that it was required by the court there, of the said W. W. if he had any thing to say for himself, why the court there ought not to proceed to judgment concerning him upon the said indictment, who said nothing besides what at first he had said, whereupon all and singular the premises being seen and understood by the court there, it was considered and adjudged by the court there, that the said W. W. should be sent and transported to some parts beyond the seas, for the space of seven years, pursuant to the statute in that case made and provided, as by the record thereof more fully appears; and the jurors aforesaid, now here sworn, do further present, that the said W. W. afterwards, to wit, on the — day of —, in the 54th year of the reign of our said lord the king, with force and arms, feloniously, and without any lawful excuse, was at large within (*k*) this kingdom of Great Britain, to wit, at Liverpool, in the said county of Lancaster, before the expiration of the said space of seven years, for which he the said W. W. was so adjudged to be transported as aforesaid, against the form of the stat. &c. and against the peace, &c.

(*k*) Qu. whether it would not be proper to aver, "within that part of the said united kingdom, which, at the time of the making of the stat. &c.

was the kingdom of Great Britain, to wit, at, &c."; but see note (*a*), p. 544. The prisoner was convicted upon this indictment, *Lanc. Sp. Ass.* 1814.

# ILLEGAL ATTEMPTS, SOLICITATIONS, AND ENDEAVOURS (a).

## 923. *Indictment for endeavouring to seduce a soldier from his allegiance (b).*

That A. B. being a wicked and evil-disposed person, on, &c. with force and arms, at, &c. feloniously, did maliciously and *advisedly* (c) *endeavour* (d) to seduce M. L. he the said M. L. then and there being a person serving in his majesty's forces by land, from his duty and allegiance to his said majesty, against the form, &c. and against the peace, &c.

(*Second count.*) Feloniously, did maliciously and advisedly endeavour, to excite and stir up the said M. L. he the said M. L. then and there being a person serving in his majesty's forces by land as aforesaid, to commit an act of mutiny, and to commit traitorous and mutinous practices, against the form, &c. and against the peace, &c.

## 924. *Indictment for enticing an artificer to leave the kingdom (e).*

That A. B. late of, &c. labourer, within twelve months next before the taking of this inquisition, on, &c. with force and arms, at, &c. unlawfully did contract with one

(a) For assaults with different intents, see pr. p. 386, &c.

(b) Under the stat. 37 G. 3. c. 70. see p. 137. the preamble recites, that whereas divers wicked and evil disposed persons by the publication of written or printed papers, and by malicious and advised speaking, have of late industriously endeavoured to seduce persons serving in his majesty's forces, by sea or land, from their duty and allegiance to his majesty, and to incite

them to mutiny and disobedience.

(c) It was holden that this allegation was sufficient without a more express averment that the defendant knew that M. L. was a soldier. See R. v. Fuller, 1 Bos. & Pull. 180. and p. 156.

(d) It was holden that this averment was sufficient without setting forth the means, see p. 137. 1 Bos. & Pull. 180.

(e) Under the stat. 23 G. 2. c. 13.

I. M. he the said I. M. then and there being a manufacturer, workman, and artificer (*f*) of Great Britain, in the weaving of linen cloth (*g*), then and there being a manufacture of Great Britain, to go out of this kingdom of Great Britain into a certain foreign country, called America (*h*), such foreign country not then being within the dominion or belonging to the crown of Great Britain, in contempt, &c. against the form, &c. and against the peace, &c.

*925. Indictment for uttering seditious words.*

That A. B. late of, &c. labourer, being a wicked, seditious, and evil-disposed person, and greatly disaffected to our said lord the king, and contriving and intending the liege subjects of our said lord the king to incite and move to hatred and dislike of the person of our said lord the king, and of the government established within this realm, on, &c. with force and arms, at, &c. in the presence and hearing of divers liege subjects of our said lord the king, maliciously, unlawfully, wickedly, and seditiously did publish, utter, and declare with a loud voice, of and concerning our said lord the king, these words following, that is to say, "His majesty, George the third, (meaning our said lord the king) is \*\*\*\*\*; thank God for it; I (meaning the said A. B.) hope he (meaning our said lord the king) will soon be no more; damnation to all royalists," to the great scandal of our said lord the king, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace, &c. (*2nd count.*) That the said A. B. being such wicked, seditious, and evil-disposed person as aforesaid, and greatly disaffected to our said lord the king,

(*f*) The words of the stat. are workman or artificer, but the conjunctive allegation is not improper, see *R. v. Myddleton*, 6 T. R. 739.

(*g*) The stat. uses the words, or any other manufacture.

(*h*) It was objected that the indictment charged generally, that America was out of the

king's dominions, though the fact was notoriously otherwise, which the court ought to notice, and that it should have been stated to what part of America the manufacturer was enticed, but the court held that the verdict of the jury was conclusive. *R. v. Myddleton*, 6 T. R. 719.

and contriving and intending the liege subjects of our said lord the king to incite and move to hatred and dislike of the person of our said lord the king, and the government established within this realm, on, &c. with force and arms, at, &c. unlawfully, wickedly, maliciously, and seditiously, in the presence and hearing of divers liege subjects of our said lord the king, again did publish, utter, and declare of and concerning our said lord the king, and his good, true, and faithful subjects, these words following, that is to say, "I (meaning the said A. B.) hope, king George the third (meaning our said lord the king) will soon be no more; damnation to all royalists." (*Conclusion as before.*)

226. *Information for writing and publishing a libel against the king and government.*

That I. H. late of London, clerk, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said lord the king, and to his administration of the government of this kingdom, and the dominions thereunto belonging, and wickedly, maliciously, and seditiously contriving, devising, and intending to stir up and excite discontent and sedition among his majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of his said majesty's subjects from his said majesty, and to insinuate, and cause it to be believed, that divers of his said majesty's innocent and deserving subjects had been inhumanly murdered by his said majesty's troops in the province, colony, or plantation of the Massachusetts Bay, in New England, in America, belonging to the crown of Great Britain, and unlawfully and wickedly to seduce and encourage his majesty's subjects in the said province, colony, or plantation to resist and oppose his majesty's government, on, &c. with (i) force and arms, at (k), &c. wickedly, maliciously (l), and seditiously did write and publish (m), and cause and procure to be written and published, a certain

(i) This allegation is unnecessary, see 7 T. R. 4. p. 166. Str. 392. 1 Vin. Ab. 337.

(k) As to the venue, see p. 26.

(l) As to this averment, see

(m) See Starkie's Law of Libel, p. 300. Baldwin v. Elphinstone, Bl. R. 1037.

*false* (n), wicked, *malicious*, scandalous, and seditious libel (o), of and concerning his said majesty's government and the employment of his troops, according to the tenor and effect (p) following:

"King's Arms-tavern, Cornhill, June 7, 1775.

"At a special meeting this day of several members of the Constitutional Society, during an adjournment, a gentleman proposed, that a subscription should be immediately entered into by such of the members present who might approve the purpose, for raising the sum of one hundred pounds, to be applied to the relief of the widows, orphans, and aged parents of our beloved American fellow-subjects, who, faithful to the character of Englishmen, preferring death to slavery, were, for that reason only, inhumanly murdered by the king's (meaning his majesty's (q)) troops at Lexington and Concord, in the province of Massachusetts (meaning the said province, colony, or plantation of the Massachusetts Bay, in New England, in America,) on the nineteenth of last April\*, which sum being immediately collected, it was thereupon resolved, that Mr. H. (meaning himself the said I. H.) do pay to-morrow into the hands of Messrs. B. and C. on account of Dr. F. the said sum of one hundred pounds; and that Dr. F. be requested to apply the same to the above-mentioned purpose. I. H."

(meaning himself the said I. H.) in contempt of our said lord the king, in open violation of the laws of this kingdom, and against the peace, &c.

(*Second count.*) That the said I. H. being such person as aforesaid, and again unlawfully, wickedly, maliciously, and seditiously devising, contriving, and intending as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. wickedly, maliciously, and seditiously printed and published, and caused and procured to be printed and published, in a certain newspaper, entitled, "The Morning Chronicle and London Advertiser," a certain other false, wicked, scandalous, malicious, and seditious libel of and concerning his said majesty's government and the employment of his troops, according to the tenor and ef-

(n) This allegation need not be proved, see 7 T. R. 4.

(o) See p. 127. and Starkie on Libel, p. 324, &c.

(p) See p. 114, &c.

(q) As to the nature and use of innuendos, see p. 122, &c and Starkie on Libel, p. 334, &c.

fect following, that is to say, (*setting out the libel as before.*)

*Third and fourth counts for publishing the same in other newspapers.*

(*Fifth count.*) Wickedly, maliciously, and seditiously did print and publish, and cause and procure to be printed and published, a certain other false, wicked, malicious, scandalous, and seditious libel of and concerning his said majesty's government and the employment of his troops, according to the tenor and effect following, that is to say, (*as before.*)

*Sixth count, for printing and publishing that part of the libel which precedes the \*.*

(*Seventh count.*) And the said attorney-general of our said lord the king, for our said lord the king further gives the court here to understand and be informed, that the said I. H. being such person as aforesaid, and again unlawfully, wickedly, maliciously, and seditiously contriving, devising, and intending, as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. wickedly, maliciously, and seditiously, did write and publish, and cause and procure to be written and published, a certain false, wicked, scandalous, malicious, and seditious libel of and concerning his said majesty's government and the employment of his troops, according to the tenor and effect following: "I (meaning himself the said I. H.) think it proper to give the unknown contributor this notice, that I (again meaning himself the said I. H.) did yesterday pay to Messrs. B. and C. on the account of Dr. F. the sum of fifty pounds, and that I (again meaning himself the said I. H.) will write to Dr. F. requesting him to apply the same to the relief of the widows, orphans, and aged parents of our beloved American fellow-subjects, who, faithful to the character of Englishmen, preferring death to slavery, were, for that reason only, inhumanly murdered by the king's (meaning his said majesty's) troops at or near Lexington and Concord, in the province of Massachusetts, (meaning the said province, colony, or plantation of the Massachusetts Bay, in New England, in America,) on the nineteenth of last April. I. H." (again meaning himself the said I. H.) (*Conclusion as before (r).*)

(*r*) The original indictment, in different newspapers, and also Comp. 683. contains other the publishing of both on different counts stating the printing and days. publishing of the latter libel

227. *Indictment for writing and delivering a challenge at the instance of a third person.*

That A. B. late of, &c. esq. on, &c. at, &c. being of a turbulent, wicked, and malicious disposition, and intending to procure great bodily harm and mischief to be done to C. D. late of, &c. in the county aforesaid, esquire, and also intending, as much as in him the said A. B. lay, to incite and provoke the said C. D. unlawfully to fight a duel with and against one E. F. late of the same place, esquire, on the said second day of December, in the \_\_\_\_\_ year aforesaid, with force and arms, at B. aforesaid, in the county aforesaid, did unlawfully, wickedly, and maliciously write, and cause to be written, a certain paper-writing, in the words, letters, and figures following, to wit, "To C. D. esquire; at B. (meaning the said C. D.) by the desire of Mr. E. F. (meaning the said E. F.) I (meaning himself the said A. B.) wait on you (meaning the said C. D.) to inform you (meaning the said C. D.) that he (meaning the said E. F.) expects such satisfaction as one gentleman should require from another, for an insult bestowed on him; your (meaning the said C. D.'s) conduct merits every treatment a scoundrel deserves. Manner, time, and place left to you (meaning the said C. D.) A. B. Dec. 2." (meaning and intending by the said paper-writing a challenge to the said C. D. to fight a duel with and against the said E. F.) which said paper-writing (meaning and intending the same as such challenge as aforesaid) he the said A. B. afterwards, to wit, on the same day and year aforesaid, at B. aforesaid, in the county aforesaid, unlawfully, wickedly, and maliciously did deliver, and cause to be delivered, to the said C. D. against the peace, &c.

(*Second count, for delivering a written challenge as from, and on the part, and by the desire of E. F.*) That the said A. B. being such evil-disposed person and disturber of the peace of our said lord the king as aforesaid, and intending to procure great bodily harm and mischief to be done to the said C. D. and to incite and provoke him the said C. D. unlawfully to fight a duel with and against the said E. F. afterwards, to wit, on the same day and year aforesaid, with force and arms, at B. aforesaid, in the county aforesaid, did unlawfully, wickedly, and maliciously deliver, and cause to be delivered, a certain written challenge, as from, and on the part and by the



desire of the said E. F. to the said C. D. unlawfully to fight a duel with and against the said E. F. which said last-mentioned challenge is as follows, that is to say, (*set out the challenge,*) against the peace of our said lord the king, his crown and dignity.

(*Third count, for provoking and inciting the prosecutor to fight.*) That the said A. B. being such evil-disposed person, and disturber of the peace of our said lord the king as aforesaid, and intending to procure great bodily harm and mischief to be done to the said C. D. and to incite and provoke him the said C. D. unlawfully to fight a duel with and against the said E. F. afterwards, to wit, on the same day and year aforesaid, with force and arms, at B. aforesaid, in the county aforesaid, did unlawfully, wickedly, and maliciously, provoke and incite the said C. D. (in the peace of God and our said lord the king then and there being,) unlawfully to fight a duel with and against the said E. F. against the peace, &c.

228. *Information for challenging and posting.*

That A. B. late of, &c. esquire, being a person of turbulent, wicked, and malicious disposition, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly and maliciously intending, as much as in him lay, not only to terrify and affright one C. a good and peaceable subject of our said lord the king, but also to kill and murder him, heretofore, to wit, on, &c. with force and arms, at, &c. unlawfully and wickedly did provoke and challenge the said C. to fight and duel against him the said A. B. with sword and pistol; and the said ——— of our said lord the king, giveth the court here further to understand and be informed, that the said C. having then and there refused to fight with the said A. B. in pursuance of such wicked and unlawful challenge last aforesaid, he the said A. B. for the completing his aforesaid evil and wicked purpose and design, and further to provoke and incite the said C. to fight and duel against him the said A. B. in the manner aforesaid, afterwards, to wit, on the same day and year aforesaid, at C. aforesaid, in the county aforesaid, did wickedly and maliciously place, stick up, and upon, and caused to be placed, stuck up, and exposed to public view, to wit, on the market house in C. aforesaid, a certain paper writing, with the

name of him the said A. B. thereunto subscribed, containing certain scurrilous and abusive matter against the said C. of the tenor following, that is to say, " Having received, (meaning thereby that the said A. B. had received,) a most ungentlemanlike affront from C. H. esquire, (meaning the said C.) I (meaning himself the said A. B.) distinguish him (meaning the said C.) thus, that none may doubt the individual man of —, in the county of M. he (again meaning the said C.) having in the most cowardly manner refused to give me (meaning himself the said A. B.) the satisfaction due to a gentleman, I, (meaning himself the said A. B.) here in the sight and for the information of his countrymen, post him, (meaning the said C.) and declare him (again meaning the said C.) to be a dirty, cowardly, insolent fool, as such, I (meaning himself the said A. B.) will ever treat him, (meaning the said C.) A. B. of B. in the county of M." to the great damage and terror of him the said C. H. and against the peace of our said lord the king, his crown, and dignity.

*229. Indictment for drawing in effigy the collectors of the assessed taxes, in pursuance of a conspiracy.*

That A. B. late of, &c. labourer, C. D. late of the same place, labourer, &c. being respectively persons of evil, envious, and wicked minds, and of most malicious dispositions, and maliciously and unlawfully devising and intending to injure and aggrieve one E. F. gentleman, then and there being an officer and person engaged and employed in certain business relating to the revenue of our said lord the king, to wit, an inspector of the duties on horses and windows, and all other duties under the management of the commissioners for managing his majesty's affairs of taxes, by several acts granted to his majesty, and G. H. then and there being an officer and person engaged and employed in certain business relating to the revenue of our said lord the king, to wit, an officer for the survey and inspection of the several and respective rates and duties upon horses, windows, and lights, and upon inhabited houses, and upon male servants, carriages, horses, mules, and dogs, by certain acts of parliament granted to his majesty, and for viewing and numbering the several lights or windows in each house, and inspecting and examining the assessment or certifi-

cate thereof, made or to be made according to the direction of certain acts of parliament, and for doing all other matters by the statutes in such case made and provided, requisite to be done by an officer of that nature, in the county of ———, being respectively good, peaceable, and well-disposed subjects of our said lord the king, and to bring them into great contempt, infamy, hatred, and disgrace, on, &c. with force and arms, at, &c. unlawfully and maliciously did conspire, combine, confederate, and agree among themselves, and together with divers other evil-disposed persons, whose names are unknown to the jurors aforesaid, to traduce, defame, vilify, and bring into public hatred, ridicule, and contempt, the said E. F. and G. H. as such officers as aforesaid, and to make, and cause to be made, a great noise, riot, rout, tumult, and disturbance, at, &c.; and that the said A. B. &c. in pursuance of and according to the conspiracy, combination, confederacy, and agreement as aforesaid before had, afterwards, to wit, on, &c. with force and arms, at, &c. unlawfully and maliciously did put and place, and cause and procure to be put and placed, two figures or effigies, the said effigies or figures being intended to represent the said E. F. and G. H. in a certain cart; and then and there unlawfully did, by and with a certain horse, draw, and cause to be drawn, the said cart with the said effigies so put and placed therein, and exposed to public sight and view, in, through, and along divers public streets and common highways there, and also before and near the dwelling-house of the said E. F. and dwelling-houses of divers liege subjects of our said lord the king there situate, and in the presence, sight, and view of divers liege subjects of our said lord the king, in the manner in which criminals are usually conveyed to the place of execution; and did then and there, during all that time, toll, and cause to be tolled, a certain large bell of and belonging to a certain church at ———, and made and caused to be made a great noise, riot, rout, and tumult, and disturbance, and utter, and cause to be uttered, divers malicious and opprobrious words and speeches, defaming and vilifying the said E. F. &c. and among others the opprobrious words and speeches following, that is to say, “Damn the dog taxers, (meaning, &c.) damn the window peepers (meaning, &c.)”; and beat, and caused to be beaten, the heads and faces and other parts

of the said effigies and figures, and did afterwards, to wit; on, &c. at, &c. cast and throw the said effigies or figures into a certain river or stream of water, to denote and represent the death and drowning of them the said, &c. and did then and there, immediately after such casting and throwing, ring, and cause to be rung, divers bells in and belonging to a certain church at, &c. in the manner in which the said bells were used to be rung on joyful occasions; and did afterwards, to wit, on, &c. at, &c. compose, write, and publish, and cause and procure to be composed, written, and published, a certain malicious and scandalous libel, containing, amongst other things therein, divers scandalous and malicious matters and things, of and concerning the said, &c. to the tenor and effect following, that is to say, "These two unfortunate malefactors (meaning, &c.) were drawn to the place of execution, attended by that able priest, Jemmy Wood; on their arrival, E. F. (meaning, &c.) stood up, and with uplifted hands addressed the spectators as follows,—'Fellow mortals, you have now presented to your view, one of the most unfortunate of men, (meaning, &c.) whose villainy has brought him to the most detestable of all deaths! I (meaning, &c.) have been the bane of social comfort to many; you now see the consequences of incorrigible roguery; I (meaning, &c.) have rid numbers of the golden dropsy which subsists near the purse, in order to add to my own disease, which will soon terminate my existence. To what dark abyss am I hastening! to unknown regions and pains yet unfelt by me! Ah! too late do I repent; the time is come I must answer to the call of justice; had I been just and true, half honest would have served me. I claim forgiveness of you, though I have wronged you all alike, with this my vile associate, (meaning, &c.) partner of my villainies,—sharer of my gains; words are wanting to convince you, how my conscience goads me; Heaven hath now poured down curses on my head.' N. B. This speech was answered by some pretty loud huzzas. The other miscreant (meaning, &c.) then stood up, and with most beastly howl thus addressed the delighted spectators,—'Ungrateful wretches, you now behold a man (meaning, &c.) in the face of death, whose courage dares to call you by your proper titles. You say, I am of notorious ploughshare and buckle memory. Yes, I am

(meaning, &c.); my conduct as such commanded your esteem; I (meaning, &c.) took but 20s. and gave you two; but I am now foiled in my attempt, to strip you of all within your shallow purses. With an eternal chaos before my eyes, I tell you, we (meaning, &c.) have shared £1500; this I say, to gripe your empty pockets. Had we (meaning, &c.) lived, your persons should have been in pawn to glut our empty coffers. Now farewell, we shall meet anon, to compliment each other on our rogueries. I (meaning, &c.) bid you all farewell.' This hardened villain's (meaning the said, &c.) speech was answered by much hissing and clapping of hands. They (meaning, &c.) were then drowned, drawn, quartered, and dissected; the joyful ceremony was finished by bell-ringing, and the sudden transition of every one's countenance from that of a melaucholy to a joyful aspect. Jemmy, the priest, endeavoured to convert them by sundry hard blows and divers bruises. Long live the king."—To the great scandal, infamy, and damage of the said, &c. to the evil example of all others, and against the peace of our said lord the king, his crown and dignity.

(*Second count.*) And the jurors aforesaid, on their oath aforesaid, do further present, that the said, &c. being respectively such persons as aforesaid, and maliciously and unlawfully devising and intending to injure and aggrieve the said, &c. then and there being respectively good, peaceable, and well-disposed subjects of our said lord the king, and to bring them into great contempt, infamy, hatred, and disgrace, on, &c. with force and arms, at, &c. unlawfully and maliciously did conspire, combine, confederate, and agree among themselves, and with divers other evil-disposed persons whose names are unknown to the jurors aforesaid, to traduce, defame, vilify, and bring into public hatred, ridicule, and contempt, the said, &c. and the characters and conduct of them the said, &c. respectively, and to make, and cause to be made, a great noise, riot, rout, tumult, and disturbance, at, &c. aforesaid; and that the said C. D. &c. in pursuance of and according to the said conspiracy, combination, confederacy, and agreement, so as aforesaid had, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, unlawfully and maliciously did put and place, and cause and procure to be put and placed, &c. (*as in first count.*)

(*Third count.*) Intending to injure the said, &c. as such *officers* as aforesaid, &c. and to make, and cause to be made, a great noise, &c. (*as before in first count,*) unlawfully and maliciously did put and place, &c. (*as in the first count, but more generally, and omitting all the opprobrious words, except damn the dog taxers and window peepers.*)

*Fourth count*,—same as third, except in the description of E. F. &c. as *officers*.

**230. Indictment for writing, sending, and publishing a libel.**

That A. B. late of O. schoolmaster, being a person of an envious, evil, and wicked mind, and of a most malicious disposition, and wickedly, maliciously, and unlawfully minding, contriving, and intending, as much as in him lay, to injure, oppress, aggrieve, and vilify the good name, fame, credit, and reputation of C. D. widow, a good, peaceable, and worthy subject of our said lord the king, and to bring her into great contempt, ridicule, and disgrace, on, &c. with force and arms, at, &c. of his great hatred, malice, and ill-will towards the said C. D. wickedly, maliciously, and unlawfully, did write and cause to be written, a certain scandalous, malicious, and defamatory libel, of and concerning the said C. D. containing the false, scandalous, malicious, and defamatory words and matter following, that is to say, (*set out a copy, with proper innuendos to explain the meaning, if they be necessary,*) which said scandalous, malicious, and defamatory libel, he the said A. B. afterwards, to wit, on, &c. at, &c. wickedly, maliciously, and unlawfully did send, and cause to be sent, to the said C. D. in the form of a letter, directed to the said C. D. by the name of Mrs. C. D. at C. to the great damage, disgrace, scandal, and infamy of the said C. D. and against the peace, &c.

(*Second count.*) That the said A. B. being such envious, evil, wicked, and malicious person, and wickedly, maliciously, and unlawfully minding, contriving, and intending, as aforesaid, to wit, on the same day and year aforesaid, with force and arms, at, &c. of his great hatred, malice, and ill-will towards the said C. D. wickedly, maliciously, and unlawfully, did write and publish to the said C. D. a certain other scandalous, malicious, and de-

famatory libel of and concerning the said C. D. containing very false, scandalous, malicious, and defamatory words and matter following, that is to say, (*set out the libel as before.*)

*Third count, for openly publishing.*

231. *Indictment for exposing to sale and public view an obscene print.*

That A. B. late of, &c. bookseller, being a scandalous and evil disposed person, and not having the fear of God in his heart, but devising, contriving, and intending the morals as well of youth as of divers other liege subjects of our said lord the king, to debauch and corrupt, and to raise and create in their minds inordinate and lustful desires, on, &c. with force and arms, at, &c. in a certain open and public shop of him the said A. B. there situate, unlawfully, wickedly, maliciously, and scandalously, did publish, sell, and utter to one C. D. a liege subject of our said lord the king, a certain lewd, wicked, scandalous, infamous, and obscene print, on paper, entitled, "The Parson receiving Pithes in Kind," representing, &c. (*as in the print,*) and which said lewd, wicked, scandalous, infamous, and obscene print, on paper, was contained in a certain printed pamphlet, then and there uttered and sold by him the said A. B. to the said C. D. entitled, "The Covent Garden Magazine, or amorous Repository, calculated solely for the entertainment of the polite World," to the manifest corruption and subversion of youth, and other liege subjects of our said lord the king, in their manners and conversation, to the great scandal, infamy, and disgrace of all the clergy of this kingdom, in contempt of our said lord the king and his laws, and against the peace, &c.

In a *second count* allege the publication, omitting that it was contained in any pamphlet, &c.

232. *Indictment for an attempt to poison another.*

(*Commencement as in pr. 1.*) Wilfully, maliciously, and unlawfully, did mix deadly poison, to wit, one ounce of white arsenic with brandy, and the same poison mixed with brandy as aforesaid, afterwards, to wit, on the same day and year above mentioned, with force

and arms, at the parish aforesaid, in the county aforesaid, feloniously, wilfully, maliciously, and unlawfully, did administer to, and cause the same to be taken by one C. D. with intent, in so doing, feloniously, wilfully, and of his malice aforethought to poison, kill, and murder the said C. D., against the form of the statute, &c. (s) and against the peace, &c.

*Add a count for administering the same, describing it as a noxious, and destructive substance.*

*233. Indictment against the defendant for attempting to burn his own house.*

That I. S. late of, &c. labourer, being a person of a wicked disposition, and unlawfully and maliciously devising, contriving, and intending to feloniously set fire to and burn and consume a certain house of one I. R. there situate, of which said house he the said I. S. was then, to wit, on the day and year hereafter mentioned, possessed for a term of years then and yet to come and unexpired, on the ——— day of ———, in the ——— year of the reign of our sovereign lord George the third, of, &c. with force and arms, at the parish aforesaid, in the county aforesaid, a certain lighted wax candle, which he the said I. S. had then lately before set fire to and lighted, did, unlawfully, wickedly, and maliciously, fix and put in a certain closet, under and adjoining certain wooden stairs, called the kitchen stairs, in the aforesaid house of the said I. R. which said house then was, and now is, situate and being in a certain neighbourhood and street there called New Bond Street, and contiguous and adjoining to certain dwelling-houses there, of and belonging to divers of the liege subjects of our said lord the king, and that he the said I. S. did then and there, unlawfully, wickedly, and maliciously, put and place about, unto, and against the said lighted candle, so fixed and put by him the said I. S. in the said closet as aforesaid, divers matches and small pieces of wood, and other combustible materials, with a wicked and malicious intention, by means thereof, then and there *feloniously* to set fire to the aforesaid house of the aforesaid I. R. and to burn and consume the same, to the great damage of the

(s) Under the stat. 43 G. 3. c. 58. See p. 554, note (k), and the Pr. p. 560.



said I. R. to the great damage, terror, and affrightment of all the liege subjects of our said lord the king near the said house then and there inhabiting and dwelling, and against the peace, &c. (t).

(*Second count.*) That the said I. S. being such person as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. a certain wax candle, which he the said I. S. had then lately before set fire to and lighted, did unlawfully, wickedly, and maliciously, fix and put up in a certain closet, under and adjoining to certain wooden stairs, called the kitchen stairs, in the dwelling house of him the said I. S. there situate, which said dwelling-house then was and now is situate and being in a certain neighbourhood and street there called New Bond Street, and contiguous and adjoining to certain dwelling-houses then and there belonging to divers of the liege subjects of our said lord the king, and that the said I. S. did then and there unlawfully, wickedly, and maliciously, put and place about, unto, and against the said last-mentioned lighted candle, so fixed and put by him the said I. S. in the said last-mentioned closet, as aforesaid, divers matches and small pieces of wood, and other combustible materials, with a wicked and malicious intention, by means thereof then and there feloniously to set fire to the aforesaid dwelling-house of him the said I. S. and to burn and consume the same, to the great danger, terror, and affrightment of all the liege subjects of our said lord the king, near the said dwelling-house of him the said I. S. then and there inhabiting and dwelling, and against the peace, &c.

(*Third count.*) Certain matches and small pieces of wood, then and there being in a certain other house of the said I. R. there situate, to wit, under certain wooden stairs in the same house, did unlawfully, wickedly, and maliciously set fire to the said last-mentioned house, then and now being and situate, &c. in a certain neighbourhood and street there, called New Bond Street, and contiguous and adjoining to certain dwelling-houses thereof, and belonging to divers of the liege subjects of our said lord the king, with a wicked and malicious intention, by means thereof, then and there feloniously to set fire to the aforesaid last-mentioned house of the said

(t R. v. Scofield. See the objection which was urged against this indictment, p. 169.

I. R. and to the damage, terror, and affrightment of all the liege subjects of our lord the king, near the said last-mentioned house then and there inhabiting and dwelling, against the peace, &c.

(*Fourth count.*) Certain matches and small pieces of wood, then and there being in the dwelling-house of him the said I. S. to wit, under certain wooden stairs in the said dwelling-house, did unlawfully, wickedly, and maliciously set fire to the said last-mentioned dwelling-house, then and now being situate, &c. (*as in the last.*)

(*Fifth count.*) A certain other house of the said I. R. there situate, and also situate and being in a certain neighbourhood and street there, called New Bond Street, and contiguous and adjoining to certain dwelling-houses there, of and belonging to divers of the liege subjects of our said lord the king, did unlawfully, wickedly, and maliciously attempt then and there feloniously to set fire to and burn and consume, to the great damage, &c. (*as before.*)

(*Sixth count.*) A certain other dwelling-house of him the said I. S. there situate, and also situate and being in a certain neighbourhood and street there, called New Bond street, and contiguous and adjoining to certain dwelling-houses thereof, and belonging to divers liege subjects of our said lord the king, did unlawfully, wickedly, and maliciously attempt then and there feloniously to set fire to and burn and consume, to the great danger, terror, and affrightment of all the liege subjects of our said lord the king, near the last-mentioned dwelling-house of him the said I. S. then and there inhabiting and dwelling, against the peace, &c. (u).

234. *Indictment for soliciting a person to steal his master's goods (x).*

(*Commencement as in pr. 1.*) Did falsely, wickedly, and

(u) *R. v. Scofield*, Cald. 397.

(x) *R. v. Higgins*, 2 East, 4. the defendant was convicted at the quarter sessions upon this indictment, and sentenced

to the pillory and two years imprisonment; the Court of King's Bench afterwards affirmed the judgment upon a writ of error, see p. 435.

unlawfully solicit and incite one J. D. a servant of one J. P. of, &c. to take, embezzle, and steal a large quantity, to wit, 100 pounds weight of twist, of the value of ——. of the goods and chattles of his master, the said J. P. to the great damage of the said J. P. and against the peace, &c.

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## OFFENCES AGAINST THE PUBLIC PEACE.

### 235. *Indictment for a riot.*

(*As in pr. 53, to the \*.*) To disturb the peace of our said lord the king, and then and there being so assembled and gathered together, did then and there \* make a great noise, riot, tumult, and disturbance, and then and there unlawfully, riotously, routously, and tumultuously remained and continued together, making such noise, riot, tumult, and disturbance, for a long space of time, to wit, for the space of six hours and more then next following, to the great terror and disturbance, not only of the liege subjects of our said lord the king there and thereabouts inhabiting, residing, and being, but of all the other liege subjects of our said lord the king there passing and repassing in and along the public streets and king's common highways there \*, in contempt of our said lord the king and his laws, and against the peace, &c.

### 236. *Indictment for a riot and assault.*

(*As in the last count to the \*, and then allege,*) in and upon one M. N. then and there being, unlawfully, riotously, and routously, did make an assault, and him the said M. N. then and there unlawfully, riotously, and routously, did beat, wound, and ill-treat, so that his life was greatly despaired of, and other wrongs to the said M. N. then and there unlawfully, riotously, and routously, did, to the great damage of the said M. N. and against the peace, &c.

237. *Indictment for a riot, and endeavouring to rescue two persons apprehended for attempting to cut down a turnpike-gate.*

(Commence as in *pr.* 53 to the \*.) And being then and there so assembled and gathered together, armed with axes, hatchets, and other instruments, with an intent to cut down and destroy, and then and there did attempt to cut down and destroy, a certain turnpike-gate, then and there lately before, to wit, on, &c. erected by authority of a certain act of parliament in that case made and provided, entitled, "An act" (*the title of the act,*) and that the said I. B. and C. D. afterwards, to wit, on the same day and year first above mentioned, at L. aforesaid, in the county aforesaid, were lawfully taken and apprehended for the offences aforesaid, and then and there were conveyed before I. S. esquire, then being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of H. aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, to be examined touching the premises, and further to be dealt with according to law, and were duly kept and detained in custody at the dwelling-house of the said I. S. situate in L. aforesaid, for that purpose ; and that the said I. B. and C. D. so being in custody for the offences aforesaid, he the said A. B. afterwards, to wit, on the same day and year first above mentioned, at L. aforesaid, in the county aforesaid, together with the said other persons (to the jurors aforesaid as yet unknown,) the dwelling-house of the said I. S. there situate, unlawfully, riotously, and routously, did attack and beset; and that he the said A. B. did then and there advise, persuade, and encourage the said other persons (to the jurors aforesaid as yet unknown) to discharge and shoot off several guns to and against the said dwelling-house of the said I. S. and by such advice, persuasion, and encouragement of the said A. B. the said other persons (to the jurors aforesaid as yet unknown) then and there did discharge and shoot off several guns against the said dwelling-house of the said I. S. with an intent forcibly to rescue the said I. B. and C. D. so as aforesaid being in custody for the causes before mentioned. (*Conclude as in pr.* 234. *from the \*.*) .

238. *Indictment upon the riot act for a riot, &c. (a)*

(Commencement as in *pr.* 53. to the \*.) To disturb the peace of our said lord the king; and that after-

(a) By stat. 1 Geo. 1. stat. 2. c. 5. s. 1. it is enacted, "that if any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, at any time after the last day of July, in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his undersheriff, or by the mayor, bailiff or bailiffs, or other head-officer, or justice of the peace of any city or town corporate, where such assembly shall be, by proclamation to be made in the king's name, in the form herein-after directed, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more, (notwithstanding such proclamation made), unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request, made by proclamation, that then such continuing together to the number of twelve or more, after such command or request made by proclamation,

shall be adjudged felony without benefit of clergy, &c."

By s. 2. any justice, &c. (*as before*) shall, among the said rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence to be, while proclamation is making, and after that, shall openly, and with loud voice, make or cause to be made proclamation in these words, or like in effect: "Our sovereign, &c." (*as set forth in the indictment in the next page.*)

s. 3. Those assembled, and not dispersing within an hour, may be seized, &c. and if they make resistance, the persons killing them, &c. shall be indemnified.

Opposing, &c. the making of such proclamation, felony without benefit, &c. and if the proclamation be obstructed, rioters shall nevertheless suffer as felons, s. 5.

s. 4. If any persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any church or chapel, &c. or any dwelling-house, barn, stable, or other outhouse,

wards, to wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, T. D. esquire, then being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of Middlesex aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, did then and there come as near as he safely could to the said A. B., C. D., E. F., G. H., and the said divers other persons, to the number of twelve and more (to the jurors aforesaid as yet unknown,) being then and there so assembled, to the disturbance of the public peace, as aforesaid, and with a loud voice, he the said T. D. did then and there command, and cause to be commanded, silence to be, while proclamation was making; and the said T. D. after that, did then and there openly, and with a loud voice, make proclamation (according to the form of the statute in such case made and provided,) in these words following, that is to say, "Our sovereign lord the king chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act, made in the first year of King George, for preventing tumults and riotous assemblies. God save the king." And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B., C. D., E. F., G. H., and the said divers other persons, to the number of twelve and more (to the jurors aforesaid as yet unknown), afterwards, to wit, on the said ——— day of March, in the said ——— year of the reign of our said lord the now king, with force and arms, at the parish aforesaid, in the county aforesaid (notwithstanding the said proclamation was so openly made as aforesaid), did then and there unlawfully, feloniously, riotously, and tumultuously to the disturbance of the public peace, remain and continue toge-

they shall suffer death without benefit, &c. recover their damages against the hundred, &c.

s. 6. Parties injured by such demolishing or pulling down, either wholly or in part, shall  
Extended to mills, and the works thereto belonging, by Geo. 3. c. 29. s. 1.

ther by the space of one hour after such command made by the proclamation so as aforesaid, against the form of the statute, &c. and against the peace, &c.

239. *Information for a riot committed in open court, upon a special commission.*

(Commence as in *pr.* 7.) That on, &c. at, &c. a special session of oyer and terminer and gaol delivery was holden, by adjournment, in and for the county of Kent, at Maidstone, in the said county, before Sir F. B. bart. one of the justices of our said lord the king of his Court of C. P. J. H. esq. another of the justices of our said lord the king of his Court of C. P. Sir S. L. knt. one of the justices of our said lord the king, assigned to hold pleas before the king himself, S. S. esq. one of the serjeants of our said lord the king, learned in the law, and others their fellows, justices and commissioners of our said lord the king, assigned, by letters patent of our said lord the king under the great seal of Great Britain, to inquire, by the oath of good and lawful men of the said county of Kent, of all high treasons and misprisions of high treason, other than such as relate to the coin of our said lord the king, within the county aforesaid done, committed, or perpetrated, and the said treasons and misprisions of treason, according to the laws and customs of England, for that time to hear and determine; and also assigned and constituted, by the letters patent of our said lord the king under the great seal of Great Britain, to deliver the gaol of our said lord the king of Kent, of the prisoners therein being and detained, on the 8th day of March, in the 38th year aforesaid, or who should be therein detained before the 10th day of April, in the same year, for and on account of any high treasons or misprisions of high treasons, other than such as relate to the coin of our said lord the king; at which said sessions, so then and there holden as aforesaid, before the commissioners and justices above named, and others their fellows as aforesaid, came A. C. esq. in the custody of I. P. esq. sheriff of the said county of Kent, and which said A. C. was and had been detained in the gaol of our said lord the king of the said county of Kent, before the 10th day of April, in the year aforesaid, to wit, on the 7th day of April, in the year aforesaid, for and on account of high

treason, to wit, at Maidstone aforesaid; and the said A. C. being then and there, to wit, at the said session so holden as aforesaid, brought to the bar in his own proper person, was then and there committed by the justices and commissioners above named, and others their fellows aforesaid, to the custody of the said sheriff, and so being in the custody of the said sheriff, was then and there, at the said sessions so holden as aforesaid, tried by the jurors of a certain jury of the said county of Kent, in that behalf duly impannelled, returned, and chosen, tried, and sworn, for and upon certain high treasons, not relating to the coin of our said lord the king, specified and charged upon him in and by a certain indictment theretofore, to wit, at a previous holding of the same sessions before the said Sir F. B., J. H., and others their fellows, justices and commissioners assigned as aforesaid, duly found, returned, and presented against him, by the jurors of a certain other jury of the said county of Kent, duly sworn and charged to inquire for our said lord the king for the body of the said county, to which said indictment he had theretofore pleaded that he was not guilty of the premises therein specified and charged upon him; and the said A. C. so being in the custody of the said sheriff as aforesaid, was then and there, at the same session by the jurors by whom he was so tried as aforesaid, found not guilty of the premises in and by the said indictment specified and charged upon him, as by the record and proceedings thereof more fully appears. And the said attorney-general, &c. further, &c. that the Right Honourable A. B. Earl of C. late of M. in the county of Kent, E. F. late of the same place, barrister at law, &c. well knowing the premises aforesaid, but unlawfully and maliciously devising and intending to impede the course of public justice, and to break the peace of our said lord the king, and to interrupt and disturb the justices and commissioners of our said lord the king above named, and others their fellows aforesaid, in the execution of their said office, and to prevent and hinder the due and peaceable holding of the said session, did, together with divers other riotous and ill-disposed persons, whose names are to the said attorney-general as yet unknown, in open court at the said session so then and there holden, and at which the said trial was so had as aforesaid, to wit, at Maidstone aforesaid, in the presence of the justices and com-



missioners of our said lord the king above named, and others their fellows as aforesaid, and before any order or direction had been made or given by the said justices or commissioners above named, and others their fellows as aforesaid, or any or either of them, for the discharge of the said A. C. from the custody of the said sheriff, and before the said A. C. was discharged from the custody of the said sheriff, to wit, on the — day of — in the 38th year aforesaid, at Maidstone aforesaid, in the county of Kent, with force and arms, made, and caused to be made, a very great riot, rout, tumult, and disturbance, and with force and arms riotously, routously, and tumultuously attempt and endeavour to rescue the said A. C. from and out of the custody of the said sheriff, so that he the said A. C. might go at large wheresoever he would, and also aid and assist the said A. C. in an attempt by him then and there made to rescue himself and escape and go at large from and out of the custody of the said sheriff, and the better to effect such rescue and escape, did then and there, at the said session so holden, and at which the said trial was so had as aforesaid, to wit, on, &c. at, &c. in the open court aforesaid, in the presence aforesaid, with force and arms, and with sticks, staves, and fists, unlawfully, riotously, routously, and tumultuously make an assault in and upon one *Frederick Rivett, one Edward Fugion, and one Thomas Adams*, in the peace of God and our said lord the king then and there being, and them the said, &c. did then and there beat, bruise, wound, and ill-treat, and thereby then and there, with force and arms, did unlawfully, riotously, routously, and tumultuously impede and obstruct the justices and commissioners of our said lord the king above named, and others their fellows aforesaid, in the due and lawful holding of the same session and the execution of their office, for a long space of time, to wit, for the space of one hour, to the damage of the said John Rivett, &c. to the great contempt, disturbance, and interruption of the justices and commissioners above named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said lord the king there being, in contempt of our said lord the king and his laws, and against the peace, &c.

(*Second count.*) That the said A. B. Earl of C. &c. well knowing all the premises aforesaid, but unlawfully

and maliciously devising and intending to impede the course of public justice, and to rescue, and cause to be rescued, the said A. C. so being in the custody of the said sheriff as aforesaid, from the custody of the said sheriff, so that he the said A. C. might go at large whithersoever he would, did afterwards, to wit, at the same session so then and there holden, and at which the said trial was so held as aforesaid, before any order or direction had been made or given by the justices and commissioners of our said lord the king above named, and others their fellows aforesaid, or any or either of them, for the discharge of the said A. C. from the custody of the said sheriff, to wit, on, &c. at, &c. with force and arms, aid and assist the said A. C. in a certain other attempt by him then and there made to rescue himself and escape and go at large from and out of the custody of the said sheriff, and the better to effect such rescue and escape as last aforesaid, did then and there, with force and arms, and with sticks, staves, and fists, unlawfully make a certain other assault in and upon the said T. A. in the peace of God and our said lord the king then and there being, and in the aid of the said sheriff then and there also being, and him the said T. A. did then and there again beat, bruise, and ill-treat, to the great damage of the said T. A. to the great contempt, &c. (*Conclusion as before.*)

(*Third count.*) That at the said session so holden, and at which the said trial was so had as aforesaid, to wit, at —————, the said A. B. Earl of C. and E. F. unlawfully and maliciously devising and intending to break the peace of our said lord the king, and to interrupt and disturb the justices and commissioners of our said lord the king above named, and others their fellows aforesaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the said session, did, together with divers other ill-disposed persons, whose names are to the said attorney-general as yet unknown, at Maidstone aforesaid, in the open court aforesaid, and in the presence of the justices and commissioners above named, and others their fellows aforesaid, to wit, on, &c. unlawfully, riotously, routously, and tumultuously assemble and gather themselves together to break the peace of our said lord the king, and to interrupt, disturb, and obstruct the justices and commissioners above named, and others their fellows aforesaid, in the execution of

their office, and to prevent and hinder the due and peaceable holding of the said session, and being so assembled and gathered together, did then and there, with force and arms, at the said session so then and there holden, and at which the said trial was so had as aforesaid, in the open court aforesaid, and in the presence aforesaid, with force and arms, unlawfully, riotously, routously, and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, tumult, riot, and disturbance, and thereby for a long space of time, to wit, for the space of half an hour, interrupt, disturb, and obstruct the justices and commissioners above named, and others their fellows aforesaid, in the lawful and peaceable holding of the said session, and in and upon the said John Revett, &c. in the peace of God and of our said lord the king then and there being, with force and arms, &c. did then and there make another assault, and them the said John Revett, &c. did again beat, bruise, wound, and otherwise ill-treat, to the great damage of the said John Revett, &c. to the great hindrance of public justice, to the manifest disturbance and violation of the peace of our said lord the king, to the great hindrance, obstruction, and contempt of the justices and commissioners above named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said lord the king there being, in contempt of our said lord the king and his laws, &c. and against the peace, &c.

(*Fourth count.*) That at a certain other special session of oyer and terminer and gaol delivery, holden, by adjournment, in and for the county of Kent, at Maidstone, in the said county, before, &c. and others their fellows, justices and commissioners of our said lord the king, by our said lord the king duly assigned and constituted to hold the same session, the said A. B. Earl of C. and E. F. unlawfully and maliciously devising and intending to break the peace of our said lord the king, and to prevent and hinder the due and peaceable holding of the said last-mentioned session, did, together with divers other ill-disposed persons, whose names are to the said attorney-general as yet unknown, in open court, at and during the continuance of the said last-mentioned session, and in the presence of the justices and commissioners last above named, and others their fellows aforesaid, to wit,

on, &c. at, &c. unlawfully, riotously, routously, and tumultuously assemble and gather themselves together, to break the peace of our said lord the king, and to prevent and hinder the due and peaceable holding of the said last-mentioned session, and being so assembled and gathered together, did then and there, with force and arms, at the said last-mentioned session, in the open court last aforesaid, in the presence last aforesaid, unlawfully, riotously, routously, and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, riot, rout, tumult, and disturbance, and thereby for a long space of time, to wit, for the space of half an hour, interrupt, disturb, and obstruct the justices and commissioners last above named, and others their fellows last aforesaid, in the lawful and peaceable holding of the said last-mentioned session, to the great hindrance of public justice, &c. (*as in the last count.*)

*Fifth count, generally for a riot.*

240. *For misbehaviour at church.*

On, &c. being Sunday, with force and arms, at, &c. in the parish church there, during the celebration of divine service, the bench of one A. J. widow, there being, from its ancient and proper place unlawfully and unjustly did take and remove, and also, then and there, with force and arms, unlawfully, unjustly, and irreverently, did disturb and hinder one E. R. clerk, then being curate of the parish church aforesaid, and in the execution of his office, and in the reading of divine service, against the peace, &c.

241. *Indictment on 1 Geo. 1. c. 5. for a riot, and beginning to pull down a dwelling-house (b).*

(*Commencement as in pr. 33. to the \*.*) To the disturbance of the public peace, and being then and there so assembled together, then and there unlawfully and with force, feloniously did begin to demolish and pull down the dwelling-house of one I. M. situate in the said parish of S. P. in the county aforesaid, against the form, &c. and against the peace, &c.

(b) See p. 642. n. (a).

242. *Indictment for a riot and assault in a dissenting meeting house.*

(Commencement as in pr. 33. to the \*.) To disturb the peace of our said lord the king, and being so assembled together, did then and there unlawfully, riotously, routously, and tumultuously, disturb several of the liege subjects of our said lord the king, peaceably assembled and met together for the purpose of hearing divine service, in a certain dissenting meeting-house there situate, by riotously and routously shouting, hallooing, and making a great noise, whereby the said divine service was greatly interrupted; and that the said M. S. ouc J. L. who was then and there attending the said divine service, in the said meeting-house, and in the peace of God and our said lord the king then and there being, unlawfully and riotously, did beat, wound, and ill-treat, so that his life was greatly despaired of, to the great disturbance of, and terror of, divers of his majesty's subjects, to the great damage of the said I. L. and against the peace, &c.

*Second count, for a common assault.*

243. *Indictment upon the stat. exempting protestant dissenters from the church of England from the penalties of certain laws (c).*

The jurors of our lord the king, upon their oath, present that A. B. late of, &c. C. D. late of, &c. and E. F. late of, &c. being disorderly and ill-disposed persons, on, &c. the same being the Lord's day, commonly called Sunday, with force and arms, unlawfully, willingly, and of purpose, maliciously and contemptuously came into a congregation of protestant dissenters, being subjects of our said lord the present king, then lawfully assembled and met for religious worship, in the dwelling-house of I. M. in the said parish of B. aforesaid, the same congregation then and there being a congregation for religious worship, permitted and allowed by a certain act of parliament, made and passed in the first year of the reign of their said late majesties King William and Queen Mary, entitled, "An Act for exempting their Majesties' Pro-

testant Subjects dissenting from the Church of England, from the Penalties of certain Laws;" and the said place of the said meeting of the said congregation, then and there being duly certified and registered according to the said act, and did then and there unlawfully, wilfully, and of purpose, maliciously and contemptuously disquiet and disturb the same congregation then and there assembled and met as aforesaid, against the form of the statute, &c. and against the peace, &c.

(*Second count.*) That the said A. B., C. D., and E. F., being such disorderly and ill-disposed persons as aforesaid, on, &c. the same day being the Lord's day, commonly called Sunday, with force and arms, unlawfully, willingly, and of purpose, maliciously and contemptuously did enter and come into a certain room or passage of the dwelling-house of the said I. M. adjoining to a certain other room in the same dwelling-house, in which last-mentioned room a certain congregation of protestant dissenters, subjects of our said lord the present king, were then and there lawfully assembled and met for religious worship, the same congregation then and there being a congregation for religious worship, permitted and allowed by a certain act of parliament made and passed in the said first year of the reign of our said late majesties King William and Queen Mary, entitled, "An Act," &c. and the said place of the said meeting of the said congregation, then and there being duly certified and registered according to the said act, did then and there unlawfully, willingly, and of purpose, and maliciously, irreverently, and contemptuously, make divers great cries, noises, and disturbances, to disturb and disquiet, and did then and there disquiet and disturb the same congregation so then and there assembled and met as aforesaid, against the form, &c. and against the peace, &c.

## OFFENCES RELATING TO TRADE AND THE PRICE OF PROVISIONS, &c.

### 244. *For unlawfully putting on board implements used in manufacturing (g).*

Unlawfully did load and put on board, and did cause and procure to be loaden and put on board, of a certain ship or vessel, then being at Liverpool aforesaid, called the *Hercules*, which was not bound directly to any port or place in Great Britain or Ireland, *certain implements, proper for the working up of the cotton manufactures of this kingdom, to wit, 100 comb plates, 100 docking plates, 1000 reed wires, 1000 dents, one roving or winding jack and fier, two plyers, and two card stretchers*, in contempt of our said lord the king and his laws, against the peace of our said lord the king, his crown and dignity, and against the form, &c.

(*Second count.*) Unlawfully did load and put on board a certain ship or vessel then being at Liverpool aforesaid, called the *Hercules*, which was not bound directly to any port or place in Great Britain or Ireland, *divers, to wit, 100 comb plates, &c. (as before) being PARTS of certain machines proper for the working up of the cotton manufactures of this kingdom.* (*Conclusion as before.*)

*Third count*—describing the articles as being parts of a certain machine or engine called a loom, proper for the working of the cotton manufactures of this kingdom.

(*Fourth count.*) And the jurors, &c. (*as before.*)

(*Fifth count.*) Unlawfully had in his possession certain implements proper for the working of the cotton manufactures of this kingdom, to wit, (*set out the implements,*) *with intent to export the same to some other port or place than Great Britain or Ireland, to wit, New York, in America.* (*Conclusion as before.*)

(g) *R. v. Orrel*, Lanc. Lent Ass. 1814. See the stat. 14 G. 3, c. 71. The defendant was convicted on the first four counts,

245. *For preparing to go abroad and use the trade of a comb-maker.*

That T. L. late of (h) Liverpool, &c. comb-maker, being a subject of our said lord the king, and an artificer and manufacturer of Great Britain, to wit, a comb-manufacturer, and not regarding the laws and statutes of this realm, on, &c. with force and arms, at Liverpool aforesaid, in the county aforesaid, was unlawfully preparing to go abroad beyond the seas, out of his majesty's dominions, into a foreign country, to wit, America, out of his majesty's dominions, *for the purpose of there using and exercising* his said trade and manufacture, against the form, &c. and against the peace, &c.

*Second count states the like offence of preparing to go to America, for the purpose of there teaching his said trade and manufacture to foreigners.*

246. *Indictment at common law for forestalling (i).*

*Middlesex.* Did buy and cause to be bought of and

(h) R. v. Lister, *Lancast. M. Ass.* 1813. See the stat. 5 G. 1. c. 27. s. 4.

(i) See the stat. 12 G. 3. c. 71. which repeals the several statutes enacted against this offence. But at common law, all endeavours to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such-like devices, are highly criminal, and punished by fine and imprisonment. 1 Haw. 234, 235. 6th ed. 479.

By the common law, a mer-

chant bringing victuals into the realm may sell the same in gross; but no person can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, without being liable to be indicted for the same. *Ib.*

And the bare engrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at common law, whether any part thereof be sold by the engrosser or not. *Ib.*

And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf, perhaps for this reason, because by such means the market is in effect forestalled. *Ibid.*



from one T. H. three hundred pounds weight of cheese, for the sum of three pounds fifteen shillings and sixpence of lawful money, as he the said T. H. then and there was coming towards London, to wit, to a certain market called Leadenhall Market, in London aforesaid, to sell the said three hundred pounds weight of cheese, and before the same was brought into the said market, where the same should be sold, in contempt of our said lord the king and his laws, and against the peace, &c.

*247. Against a regrator.*

That A. B. late of, &c. yeoman, on, &c. at, &c. to wit, in a certain market there, called B. Market, did obtain and get into his hands and possession ten geese, thirty ducks, and eighteen drakes, of and from one E. C. for the sum of four pounds and nine shillings, of lawful money of Great Britain, (the said geese, ducks, and drakes, then being brought to the said market by the said E. C. to be sold); and afterwards, to wit, on the same first day of March, in the year aforesaid, he the said A. B. at the parish aforesaid, in the county aforesaid, in the said market there, called B. Market, unlawfully did regrate the said geese, ducks, and drakes, and sell the same again to one W. S. for the sum of five pounds. (*Conclude as in the last.*)

*248. Against an engrosser.*

That A. B. late of, &c. yeoman, on, &c. at, &c. did unlawfully engross and get into his hands, by buying of and from one R. G. fifty quarters of wheat, to the intent to sell the same again at an unreasonable profit. (*Conclusion as before.*)

*249. For spreading rumours with intent to raise the price of hops (k).*

(*Commencement as in pr. 1.*) Wickedly intending to enhance the price of hops, did spread divers false (l) ru-

(k) R. v. Waddington, 1 East, 143.

(l) This word was not in the original indictment.

mours and reports with respect to hops, by then and there openly and wickedly, in the presence and hearing of divers hop-planters and dealers in hops and others then being at W. declaring and publishing, that the then present stock of hops was nearly exhausted, and that from that time there soon would be a scarcity of hops; and that before the hops then growing could be brought to market, the then present stock of hops would be exhausted; with intent and design, by such rumours and reports, to induce divers persons unknown then present, being dealers in hops and accustomed to sell hops, and having large quantities of hops for sale, not to carry or send to any market or fair any hops for sale, and to abstain from selling such hops for a long time, and thereby generally to enhance the price of hops, in contempt, &c. and against the peace, &c.

(*Second count.*) Wickedly intending to enhance the price of hops, did openly publish and spread divers false rumours and reports with respect to hops, to the effect following, to wit, that the then present stock of hops was nearly exhausted, and that there would soon be a scarcity of hops; and that before the hops then growing could be brought to market, the then present stock of hops would be exhausted, with intent, by such rumours and reports as aforesaid, to enhance the price of hops, in contempt, &c.

(*Third count.*) Unlawfully engrossed and got into his hands, by buying, a certain large quantity of hops, to wit, 100 pockets of hops, of one W. G. (*and so on of other persons, naming them,*) at certain large prices, to wit, 15*l.* for each hundred weight, with intent to resell the same at an unreasonable profit, and thereby to enhance the price of hops, against the peace, &c.

(*Fourth count.*) Unlawfully engrossed and got into his hands a certain large quantity, to wit, 3700 pockets of hops, by contracting with G. W. &c. (*naming the persons,*) to buy and take of them the same, by then and there persuading them to sell and deliver to him the said last-mentioned quantity of hops, at certain large prices, to wit, 13*l.* for every hundred weight which should be delivered to him on, &c. then next following, 14*l.* for every hundred weight delivered to him on, &c. and 15*l.* for every hundred weight delivered to him on, &c. with intent to resell the said hops at an unreason-

able profit, and thereby greatly to enhance the price of hops (m).

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## OFFENCES AGAINST PUBLIC HEALTH AND CONVENIENCE.

### 250. *For supplying unwholesome bread.*

That A. B. late of, &c. qp, &c. at, &c. knowingly, wilfully, deceitfully, and maliciously, did provide, furnish, and deliver, to and for 800 French prisoners of war, whose names to the said jurors are yet unknown, and there being under the protection of the king, confined in a certain hospital called Eastwood Hospital, in the parish and county aforesaid, divers large quantities, to wit, 500lb. weight of bread, to be eaten as food by the said French prisoners of war; such bread being then and there made and baked in an unwholesome and insufficient manner, and then and there being made of and containing dirt, filth, and other pernicious and unwholesome ingredients (a), not fit to be eaten by man, he the said A. B. then and there well knowing the said bread to be

(m) There were several other counts in the original indictment, charging the offence more generally.

(a) In the case of R. v. Dickson, sittings after Easter term, 1814, the defendant was tried upon information, which charged, that he being employed to bake bread for the use of the children in the Royal Military Asylum at Chelsea, being a wicked and evil disposed person, did unlawfully, and for the sake of wicked lucre and gain, and in violation of the trust and confidence reposed in him, deliver to C. D. and E. F. officers of the

R. M. A. seventeen loaves as good and wholesome bread, for the use, &c.; whereas, in truth and in fact, the same was not wholesome or proper for the food of man, he well knowing, &c.

In the ensuing Trin. term, it was objected in arrest of judgment, that the noxious materials which rendered the food unwholesome, ought to have been stated; but the court held, that the indictment was sufficient, and Mr. J. Dampier observed, that the same objection had been taken and overruled in *Treave's case*, vide *infra*.

baked in an unwholesome and insufficient manner, and to be made of and to contain dirt, filth, and other pernicious and unwholesome materials and ingredients, not fit to be eaten as aforesaid; whereby the said prisoners of war did then and there eat of the said bread, and thereby then and there became distempered in their bodies, and injured and endangered in their healths, to the great damage of the said prisoners of war, to the great discredit of our said lord the king, to the evil example, &c. and against the peace, &c. (b).,

251. *Indictment for erecting and continuing a soap manufactory near an highway and dwelling houses.*

That A. B. late of, &c. manufacturer of soap, on, &c. with force and arms, at, &c. near to divers public streets, being the king's common highways; there and also near to the dwelling-houses of divers liege subjects of our said lord the king, there situate and being, did unlawfully and injuriously make, erect, and build, and cause and procure to be made, erected, and built, a certain erection or building for the purpose of making and manufacturing soap therein, and did unlawfully and injuriously make, set up, and place, and cause and procure to be made, set up, and placed in the said erection or building, divers furnaces, stoves, cauldrons, coppers, and boilers, to wit, ten furnaces, twenty stoves, twenty cauldrons, twenty coppers, and twenty boilers, for the purpose of boiling, melting, and mixing tallow, soap-lees, and other materials, used in the making or manufacturing of soap; and that the said A. B. did, on the day and year afore-

(b) *R. v. Treeve*, Corn. Ass. 1796. East. P. C. 821. It was objected in arrest of judgment, that it did not appear that the defendant acted in violation of any contract or of any moral or civil duty; but all the judges held, that the conviction was proper.

The defendant, in the above case, supplied the prisoners under a contract; but it was

holden to be unnecessary to state this in the indictment, otherwise than as matter of aggravation, since the giving to any person unwholesome victuals not fit for man to eat, *lucris causa*, or from malice or deceit, is an indictable offence apart from any other consideration. East. P. C. 822. 4 Bl. Comm. 182.

said, and on divers other days and times, between that day and the day of the taking of this inquisition, at, &c. unlawfully and injuriously boil, melt, and mix together, and cause and procure to be boiled, melted, and mixed together, in the said furnaces, stoves, cauldrons, coppers, and boilers, respectively, so made, set up, and placed in the said erection or building, as aforesaid, divers large quantities of tallow, soap-lee, and other materials used in the making and manufacturing of soap, for the purpose of making and manufacturing the same into soap, and did then and there make and manufacture, and cause and procure to be made and manufactured, divers large quantities of soap from the same tallow, soap-lee, and other materials; by reason of which said premises, divers noisome, offensive, and unwholesome smokes, vapours, smells, and stench, on the days and times aforesaid, were emitted and issued from the said erection or building, so that the air, on the several days and times aforesaid, at, &c. was thereby greatly filled and impregnated with the said smokes, vapours, smells, and stench, and was rendered and became and was corrupted, and offensive, uncomfortable, and unwholesome, to the great damage and common nuisance of all the liege subjects of our said lord the king, there inhabiting, being, and residing, and going, returning, and passing through the said streets and highways, and against the peace of our said lord the king, &c.

(*Second count, for continuing the building, &c.*) That the said A. B. on, &c. and continually from that time till the time of taking this inquisition, with force and arms, at, &c. a certain other erection or building, for the purpose of making and manufacturing soap therein, and divers furnaces, stoves, cauldrons, coppers, and boilers, to wit, ten furnaces, twenty stoves, &c. made, set up, and placed in the said last-mentioned erection or building, for the purpose of making and manufacturing the said soap, before that time by certain persons to the jurors aforesaid as yet unknown, near unto divers public streets, being the king's common highways there, and also near unto divers houses of many of his majesty's liege subjects there situate, and being unlawfully made, erected, and built, did unlawfully continue, and yet doth continue; and that the said A. B. on the day and year last aforesaid, at, &c. did unlawfully boil, melt, and mix together, in the said last-mentioned furnaces respec-

tively, so unlawfully made, erected, and built, and set up in the said last-mentioned erection or building as aforesaid, divers large quantities of tallow, soap lees, and other materials used in making and manufacturing soap; by means of which said last-mentioned premises, divers noisome, offensive, and unwholesome smokes, vapours, smells, and stench, on the days and times last aforesaid, were emitted and issued from the said last-mentioned building; and the air, on the days and times last aforesaid, at, &c. was thereby greatly filled and impregnated with the said last-mentioned smokes, vapours, smells, and stench, and was thereby rendered and became, and was corrupted, offensive, uncomfortable, and unwholesome, to the great damage and common nuisance of all the liege subjects of our said lord the king there residing and inhabiting, and going, returning, and passing through the said streets and highways, and against the peace, &c.

(*Third count, for mixing lees, and boiling tallow, soap, &c.*) That the said A. B. on, &c. with force and arms, at, &c. near to the dwelling-houses of divers of his majesty's liege subjects there situate, and also near to divers public streets being common highways there, divers large quantities of tallow, oil, lime, potashes, soap lees, and other noisome and offensive materials, did boil, melt, and mix together, and cause and procure, &c. by means of which said last-mentioned premises, divers noisome, noxious, and unwholesome smokes, vapours, smells, and stench, on the days and times last aforesaid, at, &c. aforesaid, were emitted and issued from the said last-mentioned tallow, oil, soap lees, and other materials, so boiled, melted, and mixed together as last aforesaid, and the air there, on the days and times last aforesaid, was thereby greatly filled and impregnated with the said last-mentioned smokes, vapours, smells, and stench, and was thereby rendered, and then and there became and was greatly corrupted, offensive, uncomfortable, and insalubrious, to the great damage and common nuisance, &c. (*as in the 1st count.*)

252. *Indictment for keeping hogs near a public street (d).*

(*Commencement as in pr. 255, to the \*.*) Near the dwell-

(d) This is an offence at common law. 2 Lord Raym. 1163.

ling-houses of divers liege subjects of our said lord the king, and also near divers public streets and common highways there, did, and yet doth, keep ten hogs; and the said hogs, then and there, to wit, on, &c. and on the said other days and times, at, &c. unlawfully and injuriously did feed, and yet doth feed, with the offal and entrails of beasts, and other filth, \* by reason whereof divers noisome and unwholesome smells and stenchs, during the time aforesaid, did from thence there arise, and the air there was, and yet is, thereby greatly corrupted and infected, to the great damage and common nuisance not only of all the liege subjects of our said lord the king there resident and dwelling, but also of all the liege subjects of our said lord the king passing and repassing in, by, and through the said streets and common highways there, against the peace, &c.

*253. Indictment for erecting a furnace, with a boiler, to be used for the boiling of tripe and the offal of beasts.*

That A. B. late of, &c. on, &c. at, &c. near the dwelling-houses of divers liegesubjects of oursaid lord the king there, and also near divers streets and common highways there, did unlawfully and injuriously erect and set up, and cause to be erected and set up, a certain furnace, with a boiler, to be used for the boiling of tripe, and other entrails and offal of beasts; and that the said A. B. on, &c. and on divers other days and times between that day and the day of the taking of this inquisition, at, &c. divers large quantities of tripe, and other entrails and offal of beasts, in the said boiler unlawfully and injuriously did boil, and yet doth boil. (*Conclude as in pr. 252, from the \*.*)

*254. Indictment for boiling bullocks' blood for making colours.*

(*Commence as in pr. 255, to the \*.*) In a certain building belonging to the dwelling-house of the said A. B. there situate and being, and also near the dwelling-houses of divers subjects of our said lord the king, and near divers public streets and common highways there, did unlawfully boil, and cause to be boiled, a great quantity of bullocks' blood and other filth, for the making and mixing of colours. (*Conclude as in pr. 252, from the \*.*)

*255. Indictment against a butcher for using his shop as a slaughter-house in a public market.*

That A. B. late of, &c. on, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. \* in a certain shop of him the said A. B. situate and being in a common market there, called ———, (the said market being a common passage for all the liege subjects of our said lord the king, with their goods, chattels, and merchandizes, to go, return, pass, and repass at their free will and pleasure,) did unlawfully and injuriously kill and slay, and cause to be killed and slain, ten lambs, and the excrement, blood, entrails, and other filth coming from the said lambs, did then, and on the said other days and times respectively, there cause and permit to lie and remain in the said shop for a long time, to wit, for the space of five hours, on each of those days, whereby divers filthy and unwholesome smells and stenchs from the excrement, blood, entrails, and other filth coming from the lambs aforesaid, then, and on the said other days and times respectively, there did arise, and the air there was thereby greatly corrupted and infected, to the great damage and common nuisance not only of all the liege subjects of our said lord the king near there inhabiting and dwelling, but also of all other the liege subjects of our said lord the king, in, by, and through the said common market and passage going, returning, passing, repassing, and labouring, and against the peace, &c.

*256. Indictment for erecting obstructions in a navigable river.*

That a certain part of the river ——— situate and being between ——— and ———, and also wholly situate and being in the county of D. is, and from time whereof the memory of man is not to the contrary hath been, an ancient river, and the king's ancient and common highway (e) for all the liege subjects of our said

(e) A river common to all is properly termed an highway.  
1 Haw. c. 76. s. 1.



lord the king and his predecessors with their ships, barges, lighters, boats, wherries, and other vessels, to navigate, sail, row, pass, repass, and labour, at their will and pleasure, without any impediment or obstruction whatsoever. And the jurors aforesaid, upon their oath aforesaid, do further present, That A. B. late of, &c. fisherman, on, &c. and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at, &c. unlawfully, wilfully, and injuriously did erect, place, fix, put, and set in the said river and king's ancient and common highway there, (f) (a certain snare, trap, machine, and engine for the catching and taking of fish, commonly called putts, and composed of wood, wooden stakes, and twigs;) and that he the said A. B. from the day and year first aforesaid, hitherto, with force and arms, at, &c. the said putts unlawfully, wilfully, and injuriously hath continued, and still doth continue, so erected, placed, fixed, put, and set in the said river and king's ancient and common highway; by means whereof the navigation and free passage of, in, through, along, and upon the said river — and the king's ancient and common highway there, on the same day and year aforesaid, and from thence hitherto hath been, and still is, greatly straightened, obstructed, and confined, to wit, at, &c. so that the liege subjects of our said lord the king, navigating, sailing, rowing, passing, repassing, and labouring with their ships, barges, lighters, boats, wherries, and other vessels in, through, along, and upon the said river and king's ancient and common highway there, on the same day and year aforesaid, and from thence hitherto could not, nor yet can go, navigate, sail, row, pass, repass, and labour with their ships, barges, lighters, boats, wherries, and other vessels, upon and about their lawful and necessary affairs and occasions, in, through, along, and upon the said river and king's ancient and common highway there, in so free and uninterrupted a manner as of right they ought, and before have been used and accustomed to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, navigating,

(f) Describe the obstruction according to the fact.

sailing, rowing, passing, repassing, and labouring with their ships, barges, lighters, boats, wherries, and other vessels, in, through, along, and upon the said river — and the king's ancient and common highway there, to the great obstruction of the trade and navigation of and upon the said river, against the peace, &c.

257. *Indictment for keeping a disorderly house (g).*

(Commencement as in *pr.* 255, to the \*.) Did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed, and disorderly house; and in his said house, for his own lucre and gain, certain persons, as well men as women, of evil name and fame, and of dishonest conversation, to frequent and come together, then, and on the said other days and times, there unlawfully and wilfully did cause and procure; and the said men and women, in his said house, at unlawful times, as well in the night as in the day, then and on the said other days and times, there to be and remain, drinking, tippling, whoring, and misbehaving themselves, unlawfully and wilfully did permit, and yet doth permit, to the great damage and common nuisance of all the liege subjects of our said lord the king there inhabiting, residing, and passing, and against the peace, &c.

(g) Lewdness is properly punishable by the ecclesiastical law, but the offence of keeping a bawdy-house comes also under the cognizance of the temporal courts, as a common nuisance, not only in respect of its endangering the public peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes, 3 Inst. 205. 1 Haw. 196.

And offenders of this kind are punishable not only with

fine and imprisonment, but also with such infamous punishment as to the court, in discretion, shall seem proper. *Ibid.*

And a wife may be indicted together with her husband, and condemned to the pillory with him, for keeping a bawdy-house; for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex. 1 Haw. 2. 3.

258. *Indictment for digging a hole in a street, being the king's highway.*

(Commencement as in *pr.* 1.) In a certain street, being the king's common highway there, called ———, (used for all the king's subjects with their horses, coaches, carts, and carriages, to go, return, ride, pass, repass, and labour, at their free will and pleasure,) unlawfully and injuriously \* did dig, and cause to be dug, a certain pit, containing in circumference fifteen feet, and in depth thirteen feet; and the same pit, so as aforesaid dug, and caused to be dug, in the street and highway aforesaid, from the day and year aforesaid, until ———, at, &c. unlawfully and injuriously did continue; \*\* by reason whereof the king's subjects, during the time aforesaid, could not go, return, pass, repass, ride, and labour with their horses, coaches, carts, and carriages, in, by, and through the same street and highway as they were wont and ought to do, without great peril and danger of their lives, to the great damage and common nuisance of all the liege subjects of our said lord the king, in, by, and through the same street and highway, going, returning, passing, repassing, riding, and labouring, and against the peace, &c.

259. *Indictment against nightmen for laying soil in the streets.*

(Commencement as in *pr.* 1.) In the common street and king's highway there, called ———, unlawfully and injuriously did pour out, discharge, place, and leave, and cause to be poured out, discharged, placed, and left, a great quantity of dung, human excrement, and other filth, by which divers hurtful and unwholesome smells and stenchs from the said dung, excrement, and other filth, did then and there arise, and thereby the air there became and was greatly corrupted and infected, to the great damage, &c. (*Conclude as in the last pr.*)

260. *Indictment for obstructing a public street.*

(*Commencement as in pr. 258, to the \*.*) Did put and place three empty drays, and did then, and on the said other days and times, there unlawfully and injuriously permit and suffer the said empty drays respectively to be and remain in the king's common highway aforesaid for the space of divers hours, to wit, for the space of five hours, on each of the said days, whereby the king's common highway aforesaid then, and on the said other days, for and during all the said times on each of those days respectively, was obstructed and straightened.) *Proceed as in pr. 258, from the \*\*.*)

261. *Indictment for obstructing a common passage.*

(*Commencement as in pr. 1.*) In a certain passage and common footway there, called \_\_\_\_\_, unlawfully and injuriously did dig and make, and cause to be dug and made, a certain hole, containing in length twelve feet, in breadth six feet, and in depth six feet; and that the said A. B. on, &c. with force and arms, at, &c. to wit, in the same passage and common footway, unlawfully and injuriously did erect, put, and place, and cause to be erected, put, and placed, a certain wooden cistern, containing in length five feet, and in breadth twenty inches; and that the said A. B. the said hole, so as aforesaid dug and made, and also the said wooden cistern, so as aforesaid erected, put, and placed, from the day and year aforesaid, until the day of the taking of this inquisition, with force and arms, at, &c. unlawfully and injuriously did continue, and yet doth continue; by means whereof the same passage and common footway, for and during the whole time aforesaid, was so obstructed, and was, and yet is, so dangerous, that the liege subjects of our said lord the king through the same passage and common footway could not, nor yet can, go, return, pass, and repass, so freely and safely as they ought and were wont and accustomed to do, and still of right ought to do, to the great damage

and common nuisance of all the liege subjects of our said lord the king through the same passage and common foot-way going, returning, passing, and repassing, and against the peace, &c.

*262. Indictment at common law against a sabbath-breaker, and profaner of the Lord's day, in keeping open shop.*

That A. B. late of, &c. labourer, on, &c. and from thence until the taking of this inquisition, at, &c. was, and yet is, a common sabbath breaker, and profaner of the Lord's day, commonly called Sunday; and that the said A. B. on, &c. being the Lord's day, and on divers other days and times, being the Lord's days, during the time aforesaid, at, &c. in a certain place there, called Clare-market, did keep a common, public, and open shop, and in the same shop did then, and on the said other days and times, being the Lord's days, there openly and publicly sell and expose to sale flesh-meat to divers persons, to the jurors aforesaid as yet unknown, to the common nuisance of all the liege subjects of our said the king, and against the peace (a), &c.

(a) In *R. v. Brotherton*, Str. 708. the court refused to quash an indictment of this kind, which did not conclude against the form of the stat. but judgment was afterwards given for the defendant. See the stat. 29 G.-2. c. 7. 1 Haw. c. 6. s. 12. 3 East. P. C. 5.

**263. Indictment against the inhabitants of a parish for not repairing a common highway.**

That on, &c. there was (c), and from thence hitherto hath been, and still is, a certain common king's highway (d), leading from A. (e), in the county of C. towards and unto D. in the said county, for all the liege subjects of our said lord the king, with their horses, coaches, carts, and carriages, to go, return, pass, repass, ride, and labour, at their free will and pleasure; and that a certain part of the same king's common highway, situate, lying, and being in the parish of F. (f), in the

(c) In the older precedents it is usually stated *from time whereof*, &c. but this is unnecessary. 3 T. R. 265. 2 Saund. 158. b. n. 4.

(d) Every way which is common to all the king's subjects, is properly termed an highway, so that even a river which is common to all, may be called an highway. 1 Haw. c. 76, s. 1. Co. Litt. 56. Str. 54. 10 Mod. 383.

And the road, &c. may be stated generally to be a common king's highway, without saying whether for carts or for foot passengers only; see 2 Saund. 158. n. 8. Trem. 201. 205. Cro. Car. 266. 1 Salk. 359.

(e) As to the local description of the road, see p. 61. 179.

A material variance from the description in the indictment will be fatal; thus an averment that the highway leads from A. to C. is not satisfied by evidence of a road leading from A. to B. and communicating with C. by means of a cross road. R. v. Great Canfield, 6 Esp. 136.

A description, that an highway leads between A. and B. excludes both A. and B.; so does an averment that it leads from A. to B. see p. 61. 179. 2 Saund. 158. n. 6. Halsey's case, Latch. 183. Cas. temp. Hard. 105. R. v. All Saints and St. Mary, 4 Burr. 2090. R. v. Harrow, 1 Haw. 79. s. 86.

But in pleading an highway, it is unnecessary to set out the *termini*, or to allege that it leads from one place to another; it is sufficient to aver that it is an highway. R. v. Thomson, cited Andr. 145. R. v. Hamond, 10 Mod. 382. R. v. Haddock, Andr. 145. And see 1 H. B. 351. Latch. 183. Pal. 389. 2 Roll. Rep. 412.

(f) In an indictment against a parish, it must be expressly averred that the road out of repair lies within the parish. Cowp. 3. R. v. Hartford, 2 Saund. 158. n. 5. supra, p. 179. In every indictment against a parish three averments are essential: 1. That the road is an highway. 2. That it is out of repair.

county of M. containing in length (g) ———, and in breadth ———, on, &c. was and from thence, until the day of the taking of this inquisition, hath been and still is at the parish of F. in the county aforesaid, very ruinous, miry, deep, broken, and in great decay for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king through 'the same way, with their horses, coaches, carts, and carriages, could not, during the time last aforesaid, nor yet can, go, return, pass, repass, ride, and labour, without great danger of their lives, and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same way going, returning, passing, repassing, riding, and labouring, and against the peace of our said lord the king, his crown and dignity\*, and that the inhabitants of the said parish of

3. That it is situated in the parish.

A parish is bound of common right to the repair of all highways within it. See 1 Str. 181. *R. v. the inhabitants of Norwich*, 1 Roll. Abr. 890. 1 Haw. c. 76. s. 5. But the whole of the parish must be indicted, since no sub-division can be liable, unless by virtue of a prescription, custom, or legislative provision; see note below. And if the parish be situate partly in each of two counties, still the indictment must charge the whole parish, and not such part as is within one county only. *R. v. Clifton*, 5 T. R. 498. contrary to what had been decided in *R. v. Weston Under Penyard*, 4 Burr. 2507.

So a presentment against a subdivision of a parish must shew the obligation of the inhabitants to repair, 2 T. R. 513. Sty. 163. Andr. 276.

(g) As to averring the extent of the nuisance, see p. 180; indictments for want of such averments have been holden to be defective, 1 Haw. c. 76. s. 88. *Cas. Temp. Hardwicke*, 106.; but qu. whether such an objection would now prevail, for the reason stated, p. 180. and see 2 Saund. 158. note 7. and Say. 301. where it was holden, that an indictment alleging that an highway and bridge were in a ruinous condition was not bad, though the extent was not set out.

An indictment for not repairing one side of a road ought to state that the defendant is bound to repair *ad flum viæ*; and it appears to be insufficient to allege that a certain part, setting out the length and half the breadth, is out of repair, and that the defendant is bound to repair it. Peake, N. P. 219.

F. in the said county of M. the common highway aforesaid, so as aforesaid being in decay, ought to repair and amend when and so often as it should or shall be necessary.

264. *A presentment on the view of a justice for not repairing a highway.*

*Middlesex.* J. S. esquire, one of the justices of our lord the king, assigned to keep his peace in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, by virtue of the statute in such case made and provided, upon his own proper knowledge, presents, in manner (*h*) and form following, that is to say, (*and then proceed as in pr. 263, and conclude*) in testimony whereof the said J. S. to these presents hath set his hand and seal, this ——— day of ———, in the year aforesaid (*h*).

265. *Against an individual for not repairing a road, to the repair of which he was bound, ratione tenuræ.*

*The form is the same with that of pr. 263, inserting after the\*, and that A. B. late of, &c. esquire, ought, by reason of his tenure (i) of certain lands, (k) situate, lying,*

(*h*) Such a presentment may be removed by the prosecutor, before it is traversed and judgment is given, Cowp. 178. and see 2 Str. 1209. though the act directs that such presentment shall not be removed from the quarter sessions, &c. till it be traversed and judgment be given thereupon, except where the duty or obligation of repairing may come in question.

(*i*) As against an individual the indictment must shew his obligation to repair, see p. 150; but if he be bound by reason of tenure, it is sufficient to al-

lege his obligation, generally, in the above form, either in an indictment or in a plea, since a prescription is implied in the estate of inheritance in the land. Co. Ent. 358. Keil. 52. pl. 4. 1 Haw. c. 76. s. 8. And he may be charged *ratione tenuræ* generally, without saying *ratione tenuræ sua*; for *ratione tenuræ* implies such a tenure as makes the party chargeable, 1 Vent. 331. R. v. Fanshaw, 1 Str. 187. R. v. Corrock, 1 Saund. 158. n. 9. But these are technical and appropriate words, whose meaning has been established by long usage, and



and being, at, &c. in the county aforesaid, to repair and amend the said highway, when and so often as it shall be necessary.

266. *Against a particular division of a parish for not repairing an highway.*

That on, &c. and long before, there was, and from thenceforth continually hitherto there hath been, and still is, a certain common king's highway, leading from Halifax, in the West Riding of the county of York, towards and unto Holmfirth, in the West Riding aforesaid, used for all the liege subjects of our said lord the king, to go, return, pass, and repass, on foot and on horseback, and with cattle, carts, and carriages, at their will and pleasure, and that a certain part of the said common king's highway, situate and being in that part of Lockwood which lies within the constabulary of Q. in the parish of A. in the riding aforesaid, beginning at (l) M. in the parish aforesaid, in the riding aforesaid, and extending from thence to a certain place called D. and containing in length divers, to wit, ——— yards, and in

their absence cannot be supplied by new modes of expression of equal brevity. See Sty. 400. and R. v. Kerrison, 1 Maule and Selwyn.

A private person may also be bound to repair an highway by inclosing the lands on each side of the highway; for before the inclosure the public had a right, when the way was bad, to make use of the lands adjoining, and as this advantage is taken away by the inclosure, the law requires that the person who is benefited by it to make compensation to the public, by maintaining the road in good order. 1 Haw. c. 76. s. 6. 1 Roll. Ab. 390. Cro. Car. 366. and for this reason, it is not sufficient

that he keep the road in as good a state of repair as when he inclosed the lands, if it was not then in a good state of repair. Ib. And, if the owner inclose land on one side of a road, which has been anciently inclosed on the other, he is bound to repair the whole way; but if there be no ancient inclosure on the other side, he is bound to repair one half only. 1 Haw. c. 76. s. 7. And, in such case, he ought to be charged in the indictment with not repairing the road *ad flum. via.* Peake, 219. see the pleas below.

(k) The situation of the lands should be specified.

(l) See note (e), p. 667.

breadth, divers, to wit, ——— feet, on, &c. and from thence continually, until the day of taking this inquisition, at that part of L. aforesaid which lies within the constabulary of Q. aforesaid, in the parish aforesaid, in the riding aforesaid, was and still is very, &c. (*as in pr.* 263, *from § to \**). And that within the parish of A. aforesaid, in the riding aforesaid, from time whereof the memory of man is not to the contrary, there have been and still are divers townships, districts, divisions, and places, whereof that part of Lockwood aforesaid which lies within the constabulary of Q. aforesaid, during all the time last aforesaid, hath been and still is one; and that (m) the inhabitants of that part of Lockwood which lies within the constabulary of Q. aforesaid, in the parish aforesaid, from time whereof the memory of man is not to the contrary, have repaired and amended, and have been used and accustomed to repair and amend, and of right ought to have repaired and amended, and still of right ought to repair and amend, when and so often as it hath been or shall be necessary, such and so many of the common highways situate and being within that part of Lockwood aforesaid, which lies within the constabulary of Q. aforesaid, as would otherwise be repairable and amendable by the inhabitants of the said parish at large; and that the

(m) Since the inhabitants of a particular division of a parish, are not bound, by the common law, to repair the roads within that division, their obligation must be set forth; see p. 150, and see 2 Saund. 158. n. 9. And where the obligation is upon the inhabitants of a particular district, it must arise either from custom, prescription, or from some legislative provision. Hence, it is not sufficient to allege, that the inhabitants of a particular district, from time immemorial, ought to repair and amend, but it ought to be averred, that the inhabitants, from time whereof the memory of man is not to the contrary, have been used and accustomed, &c. as in the above precedent, which was drawn by a gentleman of great skill and experience. See 5 Burr. 2700. 2 T. R. 11. and 2 Saund. 158. n. 9. and the cases there referred to. But an individual cannot be bound by prescription, that he and his ancestors, &c. have been accustomed, &c. to repair an highway or bridge, unless in respect of the tenure of land, taking toll, &c.; for the act of the ancestor cannot charge the heir without profit, but a corporation or parish, &c. may be bound to such repair by prescription. See 1 Haw. c. 76. s. 8. 13 Rep. 33. 3 Bac. A. B. 59. 2 Saund. 158. n. (9).

said part of the same common highway hereinbefore mentioned, to be ruinous, deep, miry, broken, and in decay as aforesaid, now is, and during all the time when the same part of the said common highway is above alleged to be, ruinous, deep, miry, broken, and in decay as aforesaid, was a common highway, which, but for the said prescription or usage, would be repairable and amendable by the inhabitants of the said parish of A. at large. And that by reason of the premises, the inhabitants of that part of Lockwood, which lies within the constabulary of Q. aforesaid, in the parish aforesaid, during all the time last aforesaid, ought to have repaired and amended, and still ought to repair and amend the same part of the said common highway, so being ruinous, deep, miry, broken, and in decay as aforesaid, when and so often as it hath been and shall be necessary.

(*Second count states the prescription thus.*) That within the parish of A. aforesaid, in the riding aforesaid, from time whereof the memory of man is not to the contrary, there have been and still are divers townships, districts, divisions, and places, whereof that part of L. which is within the constabulary of Q. aforesaid, during all the time last aforesaid, hath been and still is one; and that the inhabitants of the said several and respective townships, districts, divisions, and places, respectively, from time whereof the memory of man is not to the contrary, have repaired and amended, and have been used and accustomed to repair and amend, and of right ought to have repaired and amended, and still of right ought to repair and amend, independent of each other, when and so often as it hath been or shall be necessary, such and so many of the several and respective common highways respectively situate and being within the said respective townships, districts, divisions, and places, as would otherwise be repairable and amendable by the inhabitants of the said parish of A. at large.

267. *Indictment against the inhabitants of a township for not repairing a road set out by the commissioners under inclosure acts.*

That before the day of taking this inquisition, by a certain (n) act of parliament, made in the parliament of

(n) See the observations, p. 201, 2.

our lord the now king, at a session thereof holden at Westminster, in the 10th year of this reign, entitled, "An Act for dividing and enclosing such of the open Parts of the District, called the Forest of Knaresborough, in the County of York, as lie within the eleven Constableries thereof, and for other Purposes therein mentioned," it was (amongst other things) enacted, that C. D., E. F., &c. and their successors, to be nominated and appointed in manner hereinafter mentioned, should be and they were thereby appointed commissioners for setting out, dividing, assigning, and allotting all the open commonable grounds and waste lands within the said eleven constableries, and for putting the said act in execution; and that the said commissioners, or any three or more of them, should, and they were thereby required to set out and appoint, &c. (*as in the act,*) as in and by the said act, reference being thereunto had, will more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, further present, that after the making of the said act, and before the day of the taking of this inquisition, that is to say, by a certain other act of parliament, made in the said parliament, at a session thereof holden at Westminster, in the 14th year of the reign of our said lord the now king, entitled, "An Act, to amend an Act, passed in the 10th Year of the Reign of his present Majesty, entitled, 'An Act for dividing and enclosing such of the open Parts of the District called the Forest of Knaresborough, in the County of York, as lie within the eleven Constableries thereof; and for other purposes therein mentioned,'" it was amongst other things enacted, that, &c. (*setting out so much of the act as is material,*) as in and by the said last-mentioned in part recited act, reference being thereunto had, will more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, further present, that afterwards, and after the making and passing of the said several acts of parliament, and before the day of the taking of this inquisition, to wit, on, &c. at, &c. the said C. D., E. F., &c. in the said first in part recited act mentioned, respectively, pursuant and in obedience to the said several acts, took upon themselves the execution of the several powers and authorities reposed in them in and by the said several acts, as such commissioners as aforesaid. And the jurors aforesaid, upon their

oath aforesaid, further present, that after the making and passing of the said several acts, and after the said commissioners had taken upon them the execution of the powers and authorities so vested in them, by the said several acts as aforesaid; and immediately after the said commissioners had made the aforesaid division, and settled all the said several allotments, pursuant to the directions of the said acts, to wit, on, &c. at, &c. they, the said commissioners, did form and draw up, and cause to be fairly engrossed on parchment, and did duly execute, under their hands and seals, a general award or instrument, in manner and form as was by the said first in part recited act directed, and by their said general award, amongst other ways and roads therein set out and appointed, did also set out and award, and did award the same to be for ever, carriage roads, a certain part of the said open commonable grounds and waste lands, called ———, beginning at ———, and leading westward to ———, and a certain other part, &c. beginning at ———, and leading southward to ———, which said two roads, in pursuance of the powers given to the said commissioners, by the second act, they the said commissioners did thereby award to be made and kept in repair by the said inhabitants and occupiers of lands and tenements within the township of ———, and did thereby award that the roads should be called by the names above mentioned, as by the said award, reference being thereunto had, will more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, further present, that the said last-mentioned roads were and are roads leading into, through, and adjoining the said allotments, in the said second act mentioned, to wit, at the township of ——— aforesaid. And the jurors aforesaid, upon their oath aforesaid, further present, that a certain part, to wit, ——— yards in length (o), and ——— yards in breadth, of the said carriage roads, so set out and appointed to be carriage roads for ever, as aforesaid, afterwards, and after the making of the said award, of the said commissioners, in manner and form aforesaid, and after the said roads had been completed, made, and found, as required by the said act, to wit, on, &c. and from thence continually, until the day of the taking of this inquisition, to wit, at the township of

(o) See p. 180.

— aforesaid, in the county aforesaid, were and still are miry, ruinous, broke in, and in great decay, for want of the due reparation and amendment of the same, so that the liege subjects of our said lord the king, by themselves, and with their horses, coaches, carts, and carriages, could not, during all the time aforesaid, nor yet can, go, return, pass, ride, and labour, without great danger of their lives, and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same carriage roads, going, returning, passing, riding, and labouring, contrary to the form of the acts of parliament aforesaid, and against the peace of our said lord the king, his crown, and dignity: and that the inhabitants and occupiers of lands and tenements, within the said township of ———, in the county of ———, aforesaid, the said carriage roads so as aforesaid being in decay, by force of the said several acts, and by virtue of the said general award, so in pursuance thereof by the said commissioners made as aforesaid, ought, during the time last aforesaid, to have repaired and amended, and still ought to repair and amend, when and so often as it hath been or shall be necessary.

*268. For not repairing a public bridge.*

That a certain common bridge, commonly called ———, lying and being in the parish of B. in the county of E. in the common king's highway, there leading from B. aforesaid, in the county aforesaid, to the town of R. in the same county, being a common highway for all the liege subjects of our said lord the king, and his predecessors, with horses, carts, and carriages, to pass and repass, ride and labour, at their free will and pleasure, on, &c. was and still is in great decay, broken, and ruinous, so that the liege subjects of our said lord the king, in, upon, and over the said bridge, with horses, carts, and carriages, could not and cannot pass and repass, ride and labour as they ought and were accustomed to do, to the great damage and common nuisance, &c. and against the peace, &c. (*If the prosecution be against an individual ratione tenuræ, then allege,*) and that A. B. late of, &c. by reason of his tenure of certain lands, lying in the parish of B. in the said county, is bound to repair and amend the said common bridge as often and whenever it

shall be necessary. (*If against a county allege,*) and that the inhabitants of the county aforesaid are bound to repair and amend the said common bridge, when and so often as it shall be necessary.

### OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE, &c.

209. *Against a township for a misdemeanor in burying a body without notice to the coroner, &c. (p).*

That on, &c. one W. D. died at the township of C. in the county of N. of a violent death and not of a natural death, that is to say, the said W. D. then and there died of a violent wound, before that time, to wit, on, &c. at the township aforesaid, in the county aforesaid, given to the said W. D. by some person or persons to the jurors aforesaid unknown, and that the body of the said W. D. on, &c. at the township aforesaid, in the county aforesaid, lay dead; and that, at the several times aforesaid, C. F. and W. S. were coroners of our lord the king for the said county of N. to wit, at the township aforesaid, in the county aforesaid, of which said premises the inhabitants of the said township of C. in the said county, afterwards, to wit, on, &c. at the township of C. aforesaid, in the county aforesaid, had notice; nevertheless, the inhabitants of the said township of C. in the county aforesaid, well knowing the premises, but not regarding their duty in that behalf, did not, nor did any of them, at any time, send or give any notice to or for the said C. F. or the said W. S. or either of them, nor to or for any coroner of our said lord the king, for the said county of N. to view the body of the said W. D. so lying dead as aforesaid, but unlawfully, obstinately, and contemptuously, omitted and neglected so to do; nor had the said C. F. or W. S. or either of them, or any coroner of our said lord the king, for the

(p) See the case of the town Commonalty of London, Cro. of Green, in Sussex, 3 Leon. Car. 252.

207. R. v. the Mayor and

said county, any notice to view the body of the said W. D. so lying dead as aforesaid; nor had the said C. F. or W. S. or either of them, or any coroner of our said lord the king, for the said county, any notice that the body of the said W. D. was so lying dead as aforesaid; neither did the said C. F. or the said W. S. or either of them, or any coroner of our said lord the king for the said county of N. at any time view the body of the said W. D. so lying dead as aforesaid; nor was any inquisition taken, on the view of the body of the said W. D. as by law required in that behalf, but the body of the said W. D. was afterwards, to wit, on, &c. unlawfully and contemptuously buried and interred, at the township of C. aforesaid, in the county aforesaid, without any view being had of the said body of the said W. D. by the said C. F. or W. S. or either of them, or any coroner of our said lord the king, for the said county of N. and without any inquisition being taken on the view of the body of the said W. D. as by law required in that behalf, to the great hindrance of justice, in contempt of our said lord the king, and against the peace, &c.

C

*270. For rescuing a rioter.*

(*After charging a riot as in pr. 235, &c. proceed.*) And the jurors aforesaid, upon their oath aforesaid, do further present, that S. A. esquire, then and there being one of the justices, &c. (*as in pr. 184, from \* to \*\**), and then and there passing and going along the said town, in the king's highway there, and then and there seeing and observing, upon his own view, the said J. F., C. D., &c. and the said other disorderly persons, and disturbers of the peace of our said lord the king, (to the jurors aforesaid as yet unknown), so then and there assembled and gathered together, and also then and there breaking and disturbing the peace of our said lord the king, and misbehaving themselves in manner aforesaid, he the said S. A. according to the duty of his said office as a justice of the peace of our said lord the king for the said county of S. did then and there arrest and take the said J. F. in order to prevent and restrain him from any further continuing a party in the said riot and disturbance, and to cause him the said J. F. to be imprisoned, in order that he might answer and be duly punished for his offence aforesaid, according to the due form of the laws and customs of



this realm, and then and there had the said J. F. in his custody on that occasion; whereupon the said C. D. &c. (*as before*) and the said other disorderly persons, and disturbers of the peace of our said lord the king (to the jurors aforesaid as yet unknown), being so assembled and gathered together as aforesaid, and not regarding the laws of this realm, nor fearing the pains and penalties therein contained, and unlawfully and wickedly devising and intending to prevent, hinder, and obstruct the due course of law and justice, and to rescue him the said J. F. from and out of the custody of the said S. A. (then and there being in the due execution of his office of such justice as aforesaid on that occasion,) did then and there, with force and arms, unlawfully, riotously, routously, and tumultuously make an assault and affray upon the said S. A. and him the said S. A. then and there did beat, bruise, wound, and ill-treat, so that his life was greatly despaired of; and that the said C. D. &c. (*as before, except J. F.*) and the said other disorderly persons, and disturbers of the peace of our said lord the king (to the jurors aforesaid as yet unknown), being then and there so assembled and gathered together, him the said J. F. out of the custody and power, and against the will, of the said S. A. then and there unlawfully, riotously, and routously did rescue and put at large, to go unpunished for his offence aforesaid wheresoever he would; and that the said J. F. being so arrested and taken by the said S. A. as aforesaid, himself out of the custody and power, and against the will, of the said S. A. then and there unlawfully, riotously, routously, and violently did rescue, and did escape and go at large unpunished for his said offence wheresoever he would; to the great damage of the said S. A. in contempt of our said lord the king and his laws, and against the peace, &c.

*Second count for a riot and assault upon the justice.*

271. *Indictment for maintenance (q).*

That one L. P. late of, &c. yeoman, on, &c. and for the space of one whole year then next following, at Westminster, in the county of Middlesex, *maintained a cer-*

tain action, then pending in the court of our said lord the king of his Exchequer, before his barons of the said Exchequer, between one C. W. plaintiff and one D. J. defendant, of a plea of trespass and ejectment of farm, of one hundred acres of land, &c. to the great damage of the said C. W. in contempt of our said lord the king and his laws, against the form of the statutes, &c. and against the peace, &c.

(*Second count.*) *Maintained*, on the part of D. J. and W. J. a certain suit by English bill in the Court of Chancery of our said lord the king at Westminster, in the county of Middlesex, pending between D. J. and W. J. the complainants and D. L. the defendant, of and concerning the title to the said tenements, in contempt, &c. against the form, &c. and against the peace, &c.

272. *Indictment for compounding felony.*

That one W. D. at the parish of A. in the county of M. in his proper person, came before J. P. esquire, then and yet being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of M. and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and then and there, upon his oath, did charge and accuse one M. the wife of P. J. with feloniously stealing, taking, and carrying away one silver spoon and two silk handkerchiefs, of the goods and chattels of the said W. D ; upon which the said J. P. then and there issued out his warrant under his hand and seal, made in due form of law, for the apprehending and taking the said M. to answer and be examined of and concerning the felony aforesaid, on her as aforesaid charged: and that afterwards, on, &c. the said M. at, &c. for the said felony, and by virtue of the said warrant, was taken and arrested, and then and there was brought before the said J. P. the justice aforesaid, and then and there, before the same justice, of and concerning the same felony was examined; upon which the said J. P. the justice aforesaid, then and there did make a certain warrant under his hand and seal, in due form of law, directed to the keeper of ——— (r), or his deputy, thereby

(r) According to the warrant.



## CONSPIRACIES

27A. *For a conspiracy, riot, and burning of a prison by journeymen manufacturers.*

That I, S. late of R. in the county (a) palatine of Lancaster, weaver, &c. (*setting out the names*) late of the same place, weaver, &c. together with divers other evil disposed persons, to the number of 1000 and more, whose names are to the jurors aforesaid as yet unknown, on, &c. with force and arms, at, &c. being workmen and journeymen in the art, mystery, and manual occupation of weavers, and not being content to work and labour in that art and mystery, at the usual rates and prices for which they and other such workmen and journeymen had been wont and accustomed to work, but unlawfully devising and intending unjustly and oppressively to augment and increase the wages of themselves and other workmen and journeymen in the said art, mystery, and manual occupation, and unlawfully and unjustly to exact and extort great sums of money for their labor and hire in the said art, mystery, and manual occupation, from the masters who employed them therein, did unlawfully, unjustly and corruptly combine, conspire, consult, consent, and agree, among themselves, to demand (b), exact, and obtain for themselves and other workmen and journeymen in the said art, mystery, and manual occupation, from the masters who employed them therein, greater wages, hire, and reward, for their labour and work as such workmen and journeymen, than the usual and customary wages, hire, and reward then usually paid for their labour and

(a) As to the venue in an indictment for conspiracy, see p. 26.

(b) An indictment for conspiracy must either shew that it was entered into for an illegal purpose, or that it was intended to effect the object of conspiracy by unlawful means, see p. 145. and

East. P. C. 462. See the information against Lord Grey and others, 3 St. Tr. 519. for a conspiracy to entice Lady Henrietta Berkely to leave her father's house, and cohabit with one of the defendants, and the precedents in Tremaine, tit. Conspiracy.

work as such workmen and journeymen, by the masters who employed them as such workmen and journeymen in the said art, mystery, and manual occupation. And the jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said conspiracy, combination, and agreement, and in order to carry their said intentions into effect, the said I. S. &c. with the said other evil disposed persons, whose names are to the said jurors as yet unknown, did then and there, and for a long time before and afterwards, desist from and totally leave and refuse to continue their labour and work as such workmen and journeymen, and did then and there, and on divers other days and times, as well before as afterwards, in a violent and tumultuous manner meet and assemble together at R. aforesaid, in the county palatine aforesaid, and divers other places, and also then and there, and on divers other days, as well before as after, go about from place to place, and to the warehouses and workshops of divers masters and persons employing such workmen and journeymen in the said art, mystery, and manual occupation, and particularly to the warehouse and workshop of one I. R. and one H. R. being masters and persons as aforesaid, with intent and in order to alarm and terrify the said I. R. and H. R. and other such masters and employers, and by threats and menaces to cause and procure the said I. R. and H. R. and other such masters and employers, to give greater wages, hire, and reward to such workmen and journeymen for their labour and work as such workmen and journeymen, than the usual and customary wages, hire, and reward then usually paid for their labour and work as such workmen and journeymen, by the masters who employed them as such journeymen and workmen in the said art, mystery, and manual occupation; and did then and there cause and procure and compel divers such workmen and journeymen to leave and desist from the work and labour in which they were respectively employed as such workmen and journeymen, and did then and there, with force and arms, seize, take, and carry away from divers workmen and journeymen in the said art, mystery, and manual occupation, divers shuttles of and belonging to such workmen and journeymen respectively, and by them respectively used in their work and labour as such workmen and journeymen, and did also then and there, and on divers other days, as well before as after, unlawfully, riotously,

and tumultuously assemble and gather themselves together, at R. aforesaid, and divers other places in the said county, and remain and continue together for divers long spaces of time, to wit, the space of twelve hours on each of the said days, and during all those times make divers great riots, routs, tumults, and disturbances, to the great terror of all the liege and peaceable subjects of our said lord the king, and did also then and there, to wit, on, &c. with force and arms, unlawfully, riotously, and tumultuously break and enter a certain building, situate and being at R. aforesaid, called the New Bayley, used for the confinement of felons and other offenders, and divers, to wit, 500 shuttles, then and there being in the said building, did then and there, with force and arms, unlawfully, riotously, and tumultuously seize, take, and carry away\*, and did also then and there, to wit, on, &c. with force and arms, unlawfully, maliciously, riotously, and tumultuously set fire to the said building, and burn, consume, and destroy the same, to the great damage and oppression, not only of the masters employing them and other workmen and journeymen in the said art, mystery, and manual occupation, but also of divers other liege subjects of our said lord the king, in contempt of our said lord the king and his laws, and against the peace, &c.

(*Second count.*) That the said I. S. &c. together with divers other evil disposed persons, to the number of 500 and more, whose names are to the jurors aforesaid as yet unknown, afterwards, to wit, on, &c. with force and arms, at R. aforesaid, in the county aforesaid, did unlawfully, riotously, routously, and tumultuously assemble and gather together, with intent to break and disturb the public peace of our said lord the king, and being so then and there assembled and gathered together, did then and there, with force and arms, make a great noise, riot, rout, tumult and disturbance, and did then and there remain and continue together making such noise, riot, rout, tumult, and disturbance for a long space of time, to wit, the space of 12 hours, (*proceed as in the last count from the.\**)

275. *For a conspiracy to defraud the prosecutor of his money by fraudulent wagers.*

That J. H. late of, &c. labourer, T. S. late of the same place, labourer, and T. P. late of the same place, labourer, on, &c. wickedly and maliciously devising and

intending unjustly to defraud and injure one H. L. with force and arms, at, &c. between and amongst themselves unlawfully did conspire, combine, confederate, and agree to cheat and defraud the said T. L. of divers bank notes for the payment of money, of and belonging to the said T. L. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. H. in execution of the premises and in pursuance of such conspiracy, combination, confederacy, and agreement, between and amongst them the said J. H., T. S., and T. P., as aforesaid, before had and made, afterwards, to wit, on, &c. at, &c. did unlawfully invite, persuade, prevail upon, and procure the said T. L. to go into a certain public-house or inn, situate and being at L. aforesaid, in the county aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said T. P. in pursuance of such conspiracy, combination, confederacy, and agreement as aforesaid, and in order to carry the same more fully into effect, did then and there, to wit, on the same day and year aforesaid, at, &c. to wit, in the said public-house or inn there, unlawfully and unjustly lay and bet divers false and fraudulent wagers with the said T. L. of and concerning a certain halfpenny to be placed under a pot, that is to say, that he the said T. P. could guess whether the said halfpenny were head or tail three times out of four. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. H. in further pursuance of such conspiracy, combination, confederacy, and agreement, as aforesaid, and in order to carry the same more fully into effect, did then and there place and put a certain halfpenny under a certain pot for the purpose of then and there deciding the said false and fraudulent wagers, so laid and bet, as aforesaid; and that the said T. L. did then and there, to wit, on, &c. at, &c. in the said public-house, by means of fraud and collusion, then and there had and practised by, between, and amongst the said J. H., T. S., T. P. and by means of the said conspiracy so had between and amongst them as aforesaid, unlawfully and unjustly lose the said wagers, to wit, on, &c. at, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said conspiracy, &c. and by means of the said several false and fraudulent wagers so laid as aforesaid, they the said J. H., T. S., and T. P. did, on, &c. at, &c. unlawfully, wickedly, and deceitfully cheat and defraud the said

T. L. of divers bank notes of and belonging to the said T. L. that is to say, thirty bank notes for the payment of money, that is to say, for the payment of one pound respectively, and respectively of the value of one pound; &c. to the great damage of the said T. L. and against the peace, &c.

(Second count.) That the said J. H., T. S., and T. P. being persons of ill fame, name, and dishonest conversation, and wickedly devising and intending, unjustly, unlawfully, and by indirect means, to cheat and defraud the said T. L. of divers other bank notes for the payment of money, on, &c. with force and arms, at, &c. fraudulently, maliciously, and unlawfully did conspire, combine, confederate, and agree, between and amongst themselves, wrongfully, injuriously, and unjustly, by wrongful and indirect means, to cheat and defraud the said T. L. of the said last-mentioned bank notes, of and belonging to the said T. L.; and that in execution of the said last-mentioned premises; and in pursuance of the said last-mentioned conspiracy, combination, and agreement between and amongst them as last aforesaid, so last made; the said J. H., T. S., and T. P. afterwards, to wit, on, &c. with force and arms, at, &c. by certain undue and unlawful means in that behalf, fraudulently, maliciously, and unlawfully did cheat and defraud the said T. L. of divers other bank notes, that is to say, &c. (as before,) and thereby then and there, by the means last aforesaid, did greatly impoverish and injure the said T. L. to the great damage of the said T. L. and against the peace, &c.

(Third count, charging the conspiracy generally, without any overt act.)

26. *Indictment against two parish officers, for conspiring to persuade a poor couple to marry, in order to burthen the man's parish, with the maintenance of the woman (c).*

That on, &c. at, &c. one T. S. was a poor single man, and unable to maintain himself (d) and any poor woman whom he should marry and take to wife, and that the place of

(c) See the observations, p. R. v. Tanner, 1 Esp. 304. 197. 145, &c. and East, P. C. 461. whether this averment be ne-

(d) Vide *supra*, p. 146, and necessary, see East, P. C. 462.



the last legal settlement of the said T. S. on the said, &c. was, and ever since hitherto hath continued to be, and still is, in the parish of C. in the said county of O.; and that one S. M. now called S. S. and now the wife of the said T. S. on the same day and year aforesaid, and continually from thence until the marriage of the said S. with the said T. S. hereinafter-mentioned, was a poor single woman, *legally settled in (e)*, and actually chargeable to, the parish of M. in the county aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present that R. H. late of the said parish of M. yeoman, and W. H. late of the said parish of M. yeoman, well knowing the premises, and unlawfully, wickedly, and wrongfully combining, devising, designing, and intending to exonerate, free, and discharge the parishioners and inhabitants of the said parish of M. from the charge and expense which might ensue to the parishioners and inhabitants of the said parish of M. from the said S. as a poor person, then having a legal settlement in the said parish of M. and then actually chargeable to the said parish of M. and unjustly to oppress and aggrieve the parishioners and inhabitants of the said parish of C. and wrongfully and unjustly to charge and burthen the parishioners and inhabitants of the said parish of C. with the maintenance and support of the said S. on, &c. with force and arms, at, &c. unlawfully and wickedly did conspire, combine, confederate, agree, and meet together, with the wicked intent and purposes aforesaid, to cause and procure a marriage to be had and solemnized between the said T. S. and the said S.) they the said T. S. and S. at the time of such conspiracy, combination, confederacy, and agreement, being such poor persons of the several and respective parishes aforesaid); and that the said R. H. and W. H. in pursuance of the said conspiracy, combination, confederacy, and agreement between them had as aforesaid, afterwards, to wit, on the same, &c. at, &c.\* the better and more effectually to complete and perfect the said wicked contrivance, conspiracy, and intention, did *then and there*

(e) See the case of *R. v. it seems to be immaterial Edwards*, 8 Mod. 320. where she was settled, if not in the indictment was quashed C. for want of this averment; yet

*promise (f)* the said T. S. that they the said R. H. and W. H. or one of them, would pay for a license, a wedding ring, a wedding dinner, and all other costs, charges, and expenses in, about, and attending the solemnization or ceremony of the marriage herein-after next mentioned; and also that they the said R. H. and W. H. or one of them, would give something handsome to the said T. S. and S. and also then and there told the said T. S. that he the said T. S. and the said S. should have no cause to complain, if he the said T. S. would marry and take to wife the said S.; by reason of which said premises he the said T. S. was then and there prevailed upon to consent, and did then and there consent and agree to marry the said S. and did afterwards, to wit, on the same, &c. at, &c. marry and take to wife the said S. (he the said T. S. at the time of the said conspiracy, combination, confederacy, and agreement, and at and after the time of the said marriage, being a poor person as aforesaid, and not having a legal settlement in the said parish of M. but having a legal settlement in the said parish of C. and the said S. at the time of the said conspiracy, combination, confederacy, and agreement, and until the time of the said marriage, being a poor person, having a legal settlement in, and usually chargeable to, the said parish of M.) by means of which said premises, the said inhabitants and parishioners of the said parish of C. for a long time, to wit, ever since the time of the said marriage until the day of the taking of this inquisition, have been put to great charges and expenses, amounting in the whole to a large sum of money, to wit, the sum of ten pounds, in and about the maintenance and support of the said S. and are likely to be put to great trouble and further great charges and expenses in and about the maintaining and supporting of the said S. to the great damage, oppression, and grievance of the said parishioners and inhabitants of the said parish of C. and against the peace, &c.

(*Second count.*) And the jurors, &c. that on the said,

(*f*) See p. 146. and the cases there cited. Where the woman was pregnant by the man and they were willing to be married, it was holden that

no indictment lay. *R. v. Fowler, Cor. Buller, J. Taunt. Sp. Ass. 1788. East. P. C. 461.*

&c. at, &c. one T. S. was a poor single man, and unable to maintain himself and a wife: and that the place of the last legal settlement of the said T. S. on the same day and year last aforesaid, was, and hath ever since hitherto continued to be, and still is, in the said parish of C. in the said county of O. (*as in the last count, to the \*, then proceed thus,*) did unlawfully and unjustly persuade, cause, and procure the said T. S. then being such poor single person and an inhabitant of the said parish of C. as aforesaid, and the said S. then also being such poor single person, and chargeable to the said parish of M. as aforesaid to intermarry with each other. And the jurors, &c. that the said T. S. and S. did in consequence thereof, to wit, on, &c. at, &c. intermarry with each other, and that after such marriage was had, as last aforesaid, to wit, on, &c. the said S. was removed as the wife of the said T. S. to the said parish of C. as being the place of the legal settlement of the said T. S. by virtue of a certain order made under the hands and seals of the Rev. J. C. doctor in divinity, and J. W. esquire, then being two of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of O. and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, (the said T. S. being, at the time of such removal, such poor person as aforesaid); by means of which said last-mentioned premises, the parishioners and inhabitants of the said parish of C. have been put to great charges and expenses, &c. (*as before.*)

(1)  
277. *Indictment against two persons, for conspiring that one of them should rob the other, with intent to charge the hundred.*

That A. B. late of W. labourer, and C. D. late of the same, labourer, being evil-disposed persons, and, devising and intending unjustly to oppress and aggrieve divers liege subjects of our said lord the king within this realm, and wrongfully charge them with the payment of great sums of money, to the amount of two hundred and thirty pounds, and upwards, on, &c. with force and arms, at, &c. did unlawfully conspire, combine, confederate, and agree together, that he the said A. B. should, in or near the king's highway there, take from the person of the said C. D. the sum of two hundred and thirty pounds

and a silver watch, and that the said C. D. should make oath, before some justice of the peace, of the said pretended robbery; and that the said C. D. in pursuance of the said conspiracy, combination, confederacy, and agreement, did afterwards, to wit, on the same day and year above mentioned, at the parish aforesaid, in the county aforesaid, personally appear before J. D. esq. then and yet being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the same county, and did make and give information in writing, upon oath, to and before the said J. D. then and there being such justice as aforesaid, that about ten of the clock in the forenoon of that day, he the said C. D. was assaulted in the highway leading from C. in the county of W. to L. in the county of S. near a place called the Green Man, in the parish of W. in the hundred of H. in the said county of W. by a tall, lusty man, wearing a dark brown wig and a brown coat, mounted on a black horse or mare, about fifteen hands high, and was by him robbed, in the highway aforesaid, of the sum of two hundred and thirty pounds and a silver watch, and that he the said C. D. did not, at the time of the said robbery, nor then, know the person who committed the said fact, with the fraudulent and wicked intent, and on purpose to charge the inhabitants of the said hundred with the payment of the said sum of two hundred and thirty pounds, under colour of justice and process of law; whereas, in truth and in fact, he the said C. D. was not assaulted in the highway leading from C. aforesaid, in the county of W. aforesaid, to L. in the said county of S. near the said place called the Green Man, in the said parish of W. in the hundred of H. in the said county of W. by a tall, lusty man, wearing a dark brown wig and a brown coat, mounted on a black horse or mare; and whereas, in truth and in fact, he the said C. D. was not at the time in that behalf aforesaid, or at any other time whatsoever, robbed of the sum of two hundred and thirty pounds and a silver watch, as he the said C. D. so swore in and by his said information in writing as aforesaid, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. (2nd count.) And the jurors aforesaid, &c. that the said

A. B. and C. D. being such evil disposed persons as aforesaid, and devising and intending unjustly to oppress and aggrieve divers subjects of our said lord the king within this realm, and wrongfully to charge them with the payment of great sums of money, to the amount of two hundred and thirty pounds and upwards, on, &c. with force and arms, at, &c. did unlawfully and wickedly conspire, combine, confederate, and agree together, that he the said C. D. should, in or near the king's highway there, take from the person of the said A. B. the sum of two hundred and thirty pounds and a silver watch, and the said C. D. in pursuance of the said last-mentioned conspiracy, combination, confederacy, and agreement, afterwards, to wit, on the same day and year aforesaid, at the parish of W. aforesaid, in the hundred of H. in the said county of W. did take from the person of the said A. B. the sum of two hundred and thirty pounds and a silver watch, with the fraudulent and wicked intent, and on purpose to charge the inhabitants of the said hundred with the payment of the said last-mentioned sum of two hundred and thirty pounds, and the value of the said last-mentioned watch, by process of law, under colour and pretence that he the said C. D. had been robbed of the same by some person to him the said C. D. unknown, against the peace, &c.

*278. Indictment for conspiring to charge a man with a rape, and preferring an indictment against him for the same, with an intent to obtain money from him.*

That J. P. late of, &c. labourer, E. his wife, and J. H. late of the same, labourer, being evil-disposed persons, and wickedly devising and intending unjustly to deprive one H. S. of his good name, fame, credit, and reputation, and also to subject the said H. without any just cause, to the loss of his life and forfeiture of his goods, on, &c. with force and arms, at, &c. among themselves did unlawfully and wickedly conspire, combine, confederate, and agree, falsely to charge and accuse the said H. S. that he the said H. S. had then lately before feloniously ravished and carnally known the said E. against her will and consent. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. P., E. his wife, and J. H. afterwards, to wit, on, &c. at, &c. accord-

ing to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, falsely, unlawfully, and for wicked gain sake, in the presence and hearing of divers persons, did charge and accuse the said H. S. that he the said H. S. had then lately before feloniously ravished and carnally known the said E. And the jurors aforesaid, upon their oath aforesaid, do further present, that in further prosecution of the said wicked devices and intentions of them the said J. P., E. his wife, and J. H. and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, the said E. afterwards, to wit, on, &c. at, &c. did upon her oath falsely charge and accuse the said H. S. before T. D. esquire, then and yet being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, that he the said H. S. then lately before had feloniously ravished and carnally known her the said E. against her will and consent. And the jurors aforesaid, upon their oath aforesaid, do further present, that in further prosecution of the said wicked devices and intentions of them the said J. P., E. his wife, and J. H. and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, the said E. by the name of E. the wife of J. P. afterwards, to wit, at the general quarter session of the peace of our said lord the king, holden at, &c. in and for the county aforesaid, on, &c. before W. M. esq. Sir S. S. knight, J. S. and W. H. esqrs. and others their fellows, justices, &c. did falsely exhibit a certain bill against the said H. S. by the name and addition of H. S. late of, &c. to J. S. gent. (*the grand jurors*) good and lawful men of the said county, then and there sworn, and charged to inquire for our said lord the king, for the body of the said county, which said bill of indictment was, by the said jurors above named, then and there returned in the court aforesaid, before the said justices of our said lord the king above named, and others their fellows aforesaid, thus indorsed, "Not found," which said bill follows in these words, to wit, (*reciting the bill*), with intent to obtain and acquire unjustly to them the said J. P., E. his wife, and J. H. of and from the said H. S. divers sums of money for compounding the said pretended

felony and rape, so falsely charged on him as aforesaid, to the great damage, infamy, and disgrace of the said H. S. and against the peace, &c. (g)

279. *Indictment for conspiring to charge a man with receiving stolen goods, and thereby obtaining money for compounding the same, and causing him to lay out a sum of money for the entertainment of the conspirators at one of their houses.*

That A. B. late of, &c. gent. and C. D. late of the same, labourer, being ill-disposed persons, and wickedly devising and intending one M. N. not only of his credit and good reputation unjustly to deprive, but also to obtain and acquire to themselves of and from the said M. N. divers large sums of money, on &c. with force and arms, at &c.\* did amongst themselves conspire, combine, confederate, and agree, falsely to charge and accuse the said M. N. with having lately before then received stolen goods. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. and C. D. afterwards, to wit, on &c. according to the said conspiracy, combination, confederacy, and agreement between themselves before had as aforesaid, falsely, wickedly, and for the sake of lucre and gain, did, in the presence and hearing of divers persons, charge and accuse him the said M. N. that he the said M. N. had bought hats that were stolen, knowing them to have been stolen, and that they the said A. B. and C. D. did then and there falsely pretend and affirm to the said M. N. that a bill of indictment had been found, at the general session of the peace, holden at the quarter sessions, in and for the said county on, &c. then last, against the said M. N. for receiving stolen goods knowing the same to have been stolen; whereas in truth and in fact there was not at the time of such charge and accusation, nor at any time before or since, any bill or bill of indictment whatsoever in any

(g) It is unnecessary to aver that H. S. was innocent; for it is alleged that he was *falsely* charged and prosecuted, and innocence is to be intended until the contrary appears. *Regina v. Best & al. Trin. 3. Ann. B. R. Salk. 174.*

manner found against the said M. N. for the said supposed offence, so falsely charged upon him, or for any such like crime; and whereas in truth and in fact the said M. N. was (h) never guilty of the said supposed offence, or any other offence of that kind. And the jurors aforesaid, upon their oath aforesaid, do further present, that by the said false accusations, and by divers threats, menaces, and allegations of them the said A. B. and C. D. then and there uttered and made, that he the said M. N. should be transported into parts beyond the seas for the said pretended offence, they the said A. B. and C. D. did then and there demand, receive, and take of the said M. N. one piece of gold coin, of the proper coin of this realm, called a guinea, for and as a compensation and agreement of the said pretended offence, and to discharge the said M. N. from all further prosecution for the same; and they the said A. B. and C. D. did also then and there, by the false and wicked pretences aforesaid, unlawfully cause and procure the said M. N. to expend and lay out, and the said M. N. did expend and lay out twenty-three shillings, of lawful money of Great Britain, at the dwelling-house of the said A. B. in wine and other liquors, in the company and for the entertainment of them the said A. B. and C. D.\* to the great damage, infamy, and disgrace of the said M. N. and against the peace, &c.

280. *Indictment for a conspiracy to charge a man with an unnatural crime, and thereby to obtain money.*

(Commencement as in the last precedent to the \*.) Did amongst themselves conspire, combine, confederate, and agree, falsely to charge and accuse the said M. N. that he the said M. N. then lately before had committed the crime of sodomy, commonly called buggery, with him the said A. B. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. and C. D. afterwards, to wit, on, &c. at, &c. according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, falsely, unlawfully, and wickedly did charge and accuse the said M. N. that he the said M. N. then lately before had committed the crime of sodomy, commonly called buggery, with him the said A. B. whereas in truth and in fact

(h) This allegation is unnecessary.



the said M. N. was never guilty of the said crime, or of any crime of the like nature; and that they the said A. B. and C. D. in pursuance of and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, afterwards, to wit, on, &c. at, &c. unlawfully, wickedly, and unjustly did obtain, acquire, and get into their hands and possession the sum of five pounds, of lawful money of Great-Britain, of the monies of the said M. N. of and from the said M. N. under the aforesaid false colour and pretence, and also under colour and pretence of concealing the said supposed crime, and for not prosecuting the said M. N. for the same, to the great damage of the said M. N. and against the peace, &c.

(*Second count.*) That the said A. B. and C. D. on, &c. with force and arms, at, &c. wickedly, unlawfully, and for lucre and gain sake, did threaten the said M. N. that unless he the said M. N. would give them the said A. B. and C. D. five pounds, they the said A. B. and C. D. would swear sodomy (meaning the detestable crime of sodomy called buggery) against him the said M. N. whereas in truth and in fact the said M. N. was never guilty of the crime of sodomy, or of any such crime; and that the said A. B. and C. D. afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, by means of the threatening aforesaid, unlawfully, wickedly, and injuriously did obtain, acquire, and get to themselves of and from the said M. N. five pounds, of lawful money of Great Britain, of the monies of the said M. N. (i). (*Conclusion as before.*)

281. *Indictment at common law, for a conspiracy among workmen to raise their wages, and lessen the time of labour (k).*

That A. B. &c. (*setting out their names and additions,*)

(i) Vide *Rex v. Rispal*, 3 Burr. 1320, and the indictment in *Cro. Cir. Ass.* 216. Vide also 30 Geo. II. ch. 24, s. 1.

(k) By stat. 2 & 3 Edw. 6. c. 15. s. 1. if any artificers, workmen, or labourers, do conspire, covenant, or promise together, or make any oaths, that they shall not make or do their works but at a certain price or rate, or shall not enterprise, or take upon them to finish that another hath begun, or shall do but a certain work in a day,

on, &c. at, &c. being workmen and journeymen in the art, mystery, and manual occupation of a wheelwright, and not being content to work and labour in that art and mystery by the usual number of hours in each day, and at the usual rates and prices, for which they and other workmen and journeymen were wont and accustomed to work, but falsely and fraudulently conspiring and combining unjustly and oppressively to increase and augment the wages of themselves, and other workmen and journeymen in the said art, and unjustly to exact and extort great sums of money for their labour and hire in their said art, mystery, and manual occupation from their masters who employ them therein, with force and arms, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, together with divers other workmen and journeymen in the same art, mystery, and manual occupation (whose names to the jurors aforesaid are as yet unknown) unlawfully did assemble and meet together, and so being assembled and met, did then and there unjustly and corruptly conspire,

or shall not work but at certain hours and times, that then every person so conspiring, covenanting, swearing, or offending, being lawfully convicted thereof, by witness, confession, or otherwise, shall forfeit for the first offence, ten pounds to the king's highness, and if he have sufficient to pay the same, and do also pay the same within six days next after his conviction, or else shall suffer for the same offence, twenty days imprisonment, and shall have only bread and water for his sustenance; and for the second offence shall forfeit twenty pounds to the king, if he have sufficient to pay the same, and also to pay the same within six days next after his conviction, or else shall suffer for the second offence punishment of the pillory, and for the third

offence shall forfeit forty pounds to the king, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction, or else shall sit on the pillory, and lose one of his ears, and also shall at all times after that be taken as a man infamous, and his sayings, depositions, or oath, not to be credited at any time, in any matter of judgment.

s. 3. Justices of assize, justices of the peace, mayors, bailiffs, and stewards of leets, at all and every their sessions, leets, and courts, shall have full power and authority, to inquire, hear, and determine, all and singular offences, committed, against this statute, and to punish, or cause to be punished, the offender, according to the tenor of the statute.

288. *Indictment for falsely charging one with being the father of a bastard child (a).*

That R. B. late of London, yeoman, P. J. late of Lon-

but to buy more at an improper time, by false informations relative to a peace between England and France. Ibid. 206.

The stat. 33 Ed. 1. stat. 2. declares, that conspirators be they that do confederate or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously, to indite or cause to indite, or falsely to move or maintain, pleas; and also such as cause children within age to appeal men of felony, whereby they are imprisoned and sore grieved; and such as retain men in the country with liveries or fees to maintain their malicious enterprizes; and this extendeth as well to the takers as to the givers, and stewards and bailiffs of great lords, which by their seigniority, office, or power, undertake to bear or maintain quarrels, pleas, or debates, that concern other parties than such as touch the estate of their lords or themselves.

From the above definition of conspirators it seems clearly to follow, that not only those who actually cause an innocent man to be indicted, and also to be tried upon the in-

dictment, whereupon he is lawfully acquitted, are properly conspirators, but that those also are guilty of this offence who barely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such conspiracy or not. 1 Haw. c. 72. s. 2. 2 *Ld. Ray.* 1169.

By the common law there can be no doubt but that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal; as where divers persons confederate together by indirect means to impoverish a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in any matter, whether it be true or false. 1. Haw. c. 72. s. 2.

Also, it plainly appears from the words of the statute, that one person alone cannot be guilty of conspiracy within the purport of it; from whence it follows, that if all the defendants who are prosecuted for such a conspiracy be acquitted but one, the acquittal of the rest is the acquittal of that one also\*: and upon the same ground it hath been holden

\* *Vide Rex v. Rispall*, 3 Burr. 1390. where R., B., and D. were jointly indicted for a conspiracy; the first of whom did not come in to plead; upon which B. and D. were tried together, B. was acquitted, and D. found

don, yeoman, R. G. late of London, yeoman, and E. C. late of London, spinster, being persons of evil name,

that no such prosecution is maintainable against a husband and wife only, because they are esteemed but as one person in law, and are presumed to have but one will. 1 Haw. c. 72. s. 8.

He who is convicted at the suit of the king of a conspiracy to accuse another of a matter which may touch his life, shall have judgment that he lose the freedom and franchise of the law (whereby he is disabled to be put upon any jury, to be sworn as a witness, or even to appear in person in any of the king's courts;) and also that his houses, lands, and goods shall be seized into the king's hands, and his houses and lands stripped and wasted, his trees rooted up, and his body imprisoned.

This is commonly called a *villainous* judgment, and is given by the common law, and not by any statute, and is said generally, in some books, to be the proper judgment upon every conviction of conspiracy at the suit of the king, without any restriction to such as endanger the life of the party; but this point is nowhere found to be settled. 1. Haw. c. 72. s. 9.

But this judgment hath been but seldom given, there

being no instance of it since the reign of Edward the third. 2 Burr. 996, 997. 2 Inst. 383, 384.

It is usual at this day, to punish the party by pillory, fine, and imprisonment, and to cause him to find sufficient sureties for his good behaviour for a certain term. 2 Burr. 1027.

(a) See R. v. Beat & al. Trin. 3 Ann. B. R. Salk. 174.

Upon demurrer it was urged, that H. might be the father, because it was not averred that he was not the father. It was agreed by the court, 1st, that several people may lawfully meet and consult to prosecute a guilty person; otherwise, to charge one that is innocent, right or wrong; for that is indictable. That so here, that the conspiracy is the gist of the indictment, and that though nothing be done in prosecution of it, it is a complete and consummate offence of itself; and whether the conspiracy be to charge a temporal or ecclesiastical offence on an innocent person, it is the same thing. 2dly, It need not be averred that H. is innocent; for it is said, that the defendant did falsely affirm him to be the father; and innocence

guilty. R. afterwards appeared and pleaded, who was likewise found guilty. See tit. *Joinder of Parties, Verdict, Judgment*. R. v. Nicols, 2 Stra. 1227. Rex v. Kinnersley and Moore, 1 Stra. 193. R. v. Scott and Hams, 3 Burr. 1262.

fame, and dishonest conversation, and not endeavouring to seek their living by honest labour, according to the laws of this kingdom of England, but compassing, devising, and conspiring, amongst themselves, by what unlawful means they might unlawfully and unjustly obtain and acquire into their hands and possession the goods, chattels, and money, of the honest liege men and subjects of the said lady the queen, to maintain their dishonest and diabolical course of living, on, &c. at, &c. falsely, unlawfully, wickedly, and craftily contriving, intending, and conspiring, and devising among themselves to deceive and defraud one P. P. not only of his monies, but also to deprive him the said P. of his good name, fame, estate, and credit, and to bring the said P. into hatred, scandal, contempt, and infamy, amongst all the liege men and subjects of the said lady the queen, on, &c. at, &c. falsely, unlawfully, deceitfully, maliciously, and for the cause of wicked gain, conspired, contrived, consulted, and agreed amongst themselves, falsely, unjustly, wickedly, and diabolically, to charge and accuse the said P. P. to be the father of a child, whereof the said Elizabeth was then pregnant, as they then and there pretended; and by the conspiracy among them so as aforesaid before had, then and there, with force and arms, &c. they did falsely and maliciously affirm, and every one of them then and there did falsely and maliciously affirm, that he the said P. then lately before had had carnal knowledge of the body of her the said Elizabeth, and had carnally known the said Elizabeth; and that he the said P. was the father of the pretended child, whereof the said Elizabeth then was pregnant, as she asserted and pretended; and for the further execution of the premises, they the said R. B., P. J., R. G., and Elizabeth C., then and there agreed and concluded

is to be intended till the contrary appears. Vide 2 West's Prec. pl. 102. 42 Edw. 3. 14. As to the venue, see tit. *Jurisdiction, County*; see also F. N. Br. 116, 8th edit. 264. Her. pl. 259.

On an information for con-

spiracy, the fact of conspiring need not be proved, but may be collected from other circumstances. The King against Parsons and others, 1 Black. Rep. 392. Vide Rex v. Eccles, Cro. Cir. Ass. 189.

amongst themselves, that he the said R. B. should go to the said P. and charge and accuse him the said P. that he the said P. then lately before had had carnal knowledge of the body of the said Elizabeth, and that he the said P. was the father of the said pretended child, whereof they pretended that she the said Elizabeth was pregnant. And the jurors aforesaid, upon their oath aforesaid, further say, that the said R. B. in execution of the premises, and according to the said conspiracy, consultation, and agreement among them the said R. B., P. J., R. G., and Elizabeth C. as aforesaid before had, afterwards, to wit, on, &c. and at divers other times, at, &c. falsely, wickedly, maliciously, diabolically, and for the sake of wicked gain, in the hearing of many faithful liege men and subjects of the said lady the queen, charged and accused the said P. that he the said P. then lately before had had carnal knowledge of the body of the said Elizabeth C. and had carnally known her the said Elizabeth C. and that he the said P. was the father of the said pretended child, whereof they affirmed the said Elizabeth C. then was pregnant, to the great damage, &c. and against the peace, &c.

284. *Indictment against several for administering an unlawful oath (h).*

That A. B. late of, &c. labourer, C. D. &c. heretofore, to wit, on, &c. with force and arms, at Overhulton, in the county palatine of Lancaster, feloniously did administer, and cause to be administered, to one H. B. a certain oath, then and there accordingly taken by the said H. B.; and which said oath was then and there intended to bind the said H. B. so then and there taking the same, *not to inform, or give evidence* against any associate, confederate, or other person of, or belonging to a certain association, society, and confederacy, the same then and there being a certain association, society, and confederacy of persons formed to disturb the public peace,\* against the form of the statute, &c. and against the peace, &c.

(*2nd count.*) Feloniously did administer, and cause to be administered to the said H. B. a certain other oath, then

(h) Under the stat. 37 G. 3. c. 123. see p. 147.

and there accordingly taken by the said H. B.; which said last-mentioned oath was then and there intended to bind the said H. B. so then and there taking the same, *not to reveal or discover a certain combination and confederacy*, formed to disturb the public peace, against the form of the stat. &c. and against the peace, &c.

(*Third count.*) Feloniously did administer, and cause to be administered, to the said H. B. a certain other oath, then and there accordingly taken by the said H. B.; which said last-mentioned oath was then and there intended to bind the said H. B. so then and there taking the same, *not to reveal or discover ANY ILLEGAL ACT done by certain persons of and belonging to a certain association, society, and confederacy*, formed to disturb the public peace, against the form, &c. and against the peace, &c.

(*Fourth count.*) Feloniously did administer, and cause to be administered to the said H. B. a certain other oath accordingly taken, &c.; which said last-mentioned oath was then and there intended the said H. B. *to engage to disturb the public peace*, against the form of the statute, &c. and against the peace, &c.

(*Fifth, sixth, seventh, eighth counts.*) Were feloniously aiding and assisting at, and present at, and consenting to, the administering to the said H. B. a certain oath, &c. (*as in the first, second, third, and fourth counts respectively.*)

Eight other counts, the same with the eight first, except that the word "*engagement*" is substituted for the word "*oath*."

285. *For taking an unlawful oath.*

(*Comm. as in pr. 1.*) Feloniously did take a certain oath, which said oath was then and there intended to bind the said A. B. so then and there taking the same, not to inform or give evidence against any associate, confederate, or other person of and belonging to a certain association, society, and confederacy of persons formed to disturb the public peace, he the said A. B. not being compelled to take the said oath, against the form of the statute, &c. and against the peace, &c.

Add counts to correspond with the counts of the former precedent, subsequent to the first.

**286.** *Indictment against one for administering, and another for aiding at the administering, of an unlawful oath.*

(*As in pr. 284 to the \*, and then proceed,*) and that J. B. late of, &c. labourer, was then and there feloniously aiding and assisting at, and present at, and consenting to the administering the said oath to the said I. C. against the form of the statute, &c.

Add counts to correspond with the counts of precedent 284, subsequent to the first (a).

(a) This case is within the stat. though the object of the conspiracy be to raise wages, and not to stir up mutiny and sedition. See 3 East. R. 157. **R. v. Marks and others.**



## PLEAS.

287. *Not guilty in case of treason or felony.*

And being immediately asked, how he will acquit himself of the premises (*in case of felony, or of the treasons, in case of treason,*) above laid to his charge, saith that he is not guilty thereof, and thereof for good and for ill he puts himself upon the country (a).

288. *Not guilty upon an information in the King's Bench.*

And now, to wit, on ——— next after three weeks of St. Michael in that same term, before our lord the king, at Westminster, comes the said A. B. by C. D. his attorney, and after oyer of the said information, saith, that he is not guilty thereof, and of this he puts himself upon the country; and the said C. D. attorney-general of our said lord, in the court of our said lord the king, who prosecutes for our said lord the king in this behalf, doth the like, &c.

289. *Plea of a wrong addition (b).*

And the said A. B. (c), who in and by the said indictment is called by the name and addition of A. B. late of the parish of K. in the county of M. yeoman, in his own person cometh, and having heard the said indictment read, says, that at the time of the taking the said indictment, and long before, he the said A. B. was and ever

(a) In cases of treason and felony, no issue is joined with the prisoner on behalf of the crown.

(b) The plea should be tendered engrossed upon parchment, but in some instances such a plea has been allowed when offered *ore tenus*.

(c) A plea of misnomer should commence thus, "whereupon cometh R. W. who is indicted by the name of J. W." and if he should say, "the said J. W." he would be concluded. 2 Hale, 175.

since hath been, and still is inhabiting, commorant, and resident, in the parish of St. James, in the liberty of Westminster, in the said county of M.; without this, that he the said A. B. now is, or at the taking of the said indictment, or at any time before, was inhabiting, resident, or commorant at the parish of K. in the said county of M. and this he is ready to verify. Wherefore, and because he the said A. B. is not called in the said indictment, A. B. late of the parish of St. James, in the liberty of Westminster, he the said A. B. prays judgment of the said indictment, and that the same may be quashed (d).

*290. Plea, that the defendant has no addition.*

And the said A. B. comes in his proper person, and having heard the said indictment read, says, that he, at the time of the taking of the said indictment, and long before, was and yet is a yeoman; and that the said indictment does not contain an addition of the said estate of the said A. B. nor of any estate, degree, or mystery of the said A. B.; and this he is ready to verify: wherefore, for want of the addition of the estate, degree, or mystery of the said A. B. in the said indictment, he prays judgment of the said indictment, and that the same may be quashed.

*291. Plea in abatement of a writ of appeal, that there is no such parish as the one named in it.*

Comes and defends the force and injury, when, &c. and all the felony and whatsoever, &c. because he says, that he the said C. D. is by that writ appealed by the name of C. D. late of the parish of Saint James, Westminster, in the county of Middlesex, gentleman; where, in truth and in fact, there is a certain parish in the county of Middlesex, called and known by the name of the parish of Saint James, within the liberty of Westminster; but that there is not within the said county of

(d) It is necessary, under probable matter to induce the court to believe that such plea to verify the truth of the plea is true. The plea should be by affidavit, or to shew some signed by counsel.

Middlesex, neither was there on the day of obtaining the said original writ of appeal, neither hath there since been, any parish, town, or place, known and called by the name of the parish of Saint James, Westminster, as the said A. B. by his writ aforesaid above supposes, and this he the said C. D. is ready to verify, wherefore he prays judgment of the said writ, and that the same may be quashed, &c.

*292. Special demurrer to an indictment wanting an allegation of time and place.*

And the said A. B. &c. and saith, that our said lord ought not further to impeach or molest him the said A. B. on account of the premises, because he saith, that the said indictment is insufficient in law to put him the said A. B. to answer to the said indictment; and that, by the law of the land, no process ought to be made upon the said indictment against him the said A. B.; for that it doth not appear by the said indictment, upon what certain day, or in what certain place, the offence aforesaid, in the indictment aforesaid supposed to have been committed by the said A. B. was committed by the said A. B. as by the law of the land ought to appear; wherefore, for the insufficiency of the said indictment, he prays judgment, and that he may be discharged from the premises by the court here, &c.

*293. Demurrer to an indictment for non-repair of an highway.*

And now, that is to say, on, &c. at, &c. come C. D. and E. F. two of the inhabitants of the said parish, in the name of all the inhabitants of the said parish, by G. H. their attorney, and having heard the said indictment, say, that our said lord the king will not, and ought not, further to impeach or trouble the said inhabitants of the said parish, on account of the premises aforesaid; because they say, that the said indictment, and the matters therein contained, are insufficient in law; and that they, the said inhabitants of the said parish, are not bound by the law of the land to answer thereto; whereupon, for the insufficiency thereof, they pray judgment, and that the said inhabitants of the said parish may be discharged by the court here of the premises aforesaid.

294. *Joinder in demurrer.*

And M. N. who prosecutes for our said lord the king on this occasion, for our said lord the king saith, that the said indictment, and the matters therein contained, are good and sufficient in law to compel the inhabitants of the said parish to answer to the same; which said indictment, and the matters therein contained, the said M. N. who prosecutes for our said lord the king, is ready to verify, as the court, &c.; and because the said inhabitants do not answer the said indictment, nor in any wise deny the same, the said M. N. who prosecutes for our said lord the king, for our said lord the king prays judgment, and that the said inhabitants may be convicted, &c.

295. *Plea to an appeal of murder, autre-foits convict of manslaughter and admission to his clergy.*

Because he says, that otherwise, to wit, at the general gaol delivery of our lord the king of his county of Cumberland, holden for the county of Cumberland aforesaid, at the city of Carlisle, in the said county, on, &c. before E. W. knight, chief baron of the Exchequer of our said lord the king, and J. T. knight, one of the justices of our said lord the king, assigned to hold pleas before the king himself, justices assigned to deliver the gaol of our said lord the king of those being in the said prison, upon the oath of J. B. (*and twenty-one others*), good and lawful men of the county aforesaid, sworn to inquire and present for our said lord the king and the body of the said county, it was presented, that T. L. late of, &c. gentleman, not having the fear of God before his eyes, but being moved and seduced, &c. (*setting out the indictment*) against the peace of our said lord the king, his crown, and dignity. And that the said T. L. being then and there brought to the bar before the said justices, by J. P. esquire, then sheriff of the county aforesaid, to whose custody he had been before committed, in his proper person comes, and then and there being immediately asked, how he would acquit himself of the premises, by the said indictment above alleged against him, then said, that he was not guilty thereof, and thereof for good and ill then put himself upon the

country; and the jury sworn thereupon by the said sheriff in that behalf then and there returned and impanelled, to wit, J. B. gent. &c. being called on, came, who being then taken, tried, and sworn, upon their oath said, that the said T. L. was not guilty of the murder aforesaid, in the indictment aforesaid above specified, in manner and form as he the said T. L. had in his plea above alleged, nor had he ever fled; but the jurors aforesaid, upon their oath aforesaid, then and there did say, that the said T. L. was guilty of the felony and manslaughter only, to wit, of the felonious killing of the said R. A. and that the said T. L. had no goods or chattels, lands or tenements, at the time of the committing of the said felony and manslaughter, or ever afterwards, to the knowledge of the said jurors, as by the record thereof in full force and effect still being, (which record, our lord the king for certain reasons hath caused to come into his court here, before the king himself, by his writ of certiorari, which now remains filed of record in the said court of our lord the king, before the king himself, amongst the indictments of the term of Saint Hilary, in the ——— year of the reign of our said lord the king,) amongst other things fully appears; and the said T. L. further saith, that no judgment of and concerning the premises in the said indictment alleged against him, was pronounced at the said general gaol delivery; but the said T. L. further saith, that he the said T. L. then was and yet is a clerk, and then and there at the said general gaol delivery of the county of Cumberland aforesaid, before the justices assigned to deliver the said gaol, demanded (e) that the benefit of clergy should be allowed him for the manslaughter aforesaid, whereof he was then convicted by a jury of the country as aforesaid, and offered himself and was ready to read as a clerk, if the court would admit him to the book for that purpose; and the said T. L. further saith, that afterwards, to wit, on Monday next after the morrow of the purification of the blessed virgin, in the term of Saint Hilary, in the eighth year of the reign of our said lord the now king, in the said court of our said lord the king here, before the king himself, came the said T. L. in his proper person, in the

(e) The prayer, under the statute, in that case made and stat. 5 Ann. c. 6. would now provided, might be allowed be, "that the benefit of the sta- him."

custody of the marshal of the marshalsea of our lord the now king, in the court of our lord the now king, before the king himself, into whose custody the said T. L. before, to wit, on, &c. being brought here to the bar by virtue of a writ of our said lord the king, of *habeas corpus ad subjiciendum*, &c. directed to the sheriff of the said county of Cumberland, was then and there by the said court committed, and is committed to the custody of the said marshal; and immediately by the said court here being asked if he had any thing to say for himself, why the said court of our said lord the king, before the king himself, should not proceed to judgment and execution, against the said T. L. of and concerning the aforesaid conviction of manslaughter in the said record, for the death of the said R. A. which said record our said lord the king had for certain reasons caused to be removed, by his writ of certiorari, into the said court of our said lord the king, before the king himself as aforesaid; and which did then and still does remain in the said court of our said lord the king, before the king himself. And the said T. L. then and there (f) said, that he was a clerk, and then and there prayed the benefit of clergy to be allowed him; and thereupon, the book being then and there delivered by the said court to the said T. L. the said T. L. did then and there read as a clerk; and it was then and there considered by the said court, that the said T. L. should be burnt upon his left hand, and the said T. L. was then and there burnt on his left hand, as by the record thereof, in the said court of our said lord the king, before the king himself, fully appears. And this he the said T. L. is ready to verify, wherefore he prays judgment if the said J. A. ought to have or maintain his said appeal against him the said T. L. concerning the death aforesaid, &c. with this, that he the said T. L. is willing to verify, that he the said T. L. now appealed, and the said T. L. in the said indictment above named,

(f) Under the stat. 5 Ann. c. 6. the entry would now be, that the benefit of the statute, "in such case made and provided, might be allowed to him, and the same was allowed

to him accordingly, and thereupon it was considered, &c." A person convicted of manslaughter is still liable to be burnt in the hand.

and in form aforesaid, convicted and burnt in the hand, are one and the same person, and not another or different persons, and that the wound of which the said R. A. is supposed in the said appeal to have died, and the said wound of which the said R. A. is supposed in the said indictment to have died, are one and the same wound, and not other and different wounds, and he prays allowance of the premises. And as to the felony and murder aforesaid, the said T. L. saith, that he is not guilty thereof, and thereof for good and ill he puts himself upon the country, &c. and the said J. A. doth the like, &c.

296. *Plea by two of the inhabitants of a parish that they are not guilty as to part, and as to the rest, that it ought to be repaired by particular individuals, by reason of the inclosure of certain lands.*

And A. B. and C. D. two of the inhabitants of the said parish of M. for themselves and the rest of the inhabitants of the said parish of M. except E. F., G. H., and I. K. come, and having heard the said indictment read, say, that as to certain part of the said highway, in the said indictment specified, and therein mentioned to be ruinous and in decay, beginning at A. and extending from thence to B. in the said indictment mentioned, and therein alleged to be ruinous and in decay as aforesaid, they are (g) not guilty of the premises in the said indict-

(g) Upon a plea of not guilty, the parish may shew that the road in question is in repair, or that it is not an highway, or that it does not lie within the parish, for these facts the prosecutor is bound to prove, and therefore they may be disproved by the defendant. 1. Str. 181. But the parish being *prima facie* bound by the law of the land to repair all highways lying within it, must, in order to discharge itself of that liability, throw the burden upon others, 1 Vent.

189. Katherine Austin's case, 1 Ld. Ray. 725. 2 T. R. 111. And for this purpose it is necessary to disclose the ground on which they claim to be discharged, in a special plea. 1 Haw. c. 76. s. 9. 1 Mod. 112. 1 Vent. 256. 2 Saund. 159. n. 10. and so strongly does this common law liability attach, that where particular persons who are charged with the repair of an highway by act of parliament (1 Ld. Ray. 725.) or particular individuals formerly liable by prescription,

ment specified, above laid to their charge, as by the said indictment is above supposed, and of this they put themselves upon the country, &c.; and as to the residue of the same highway, they say, that they do not intend, that our said lord the king will further proceed against the said inhabitants of the said hamlet of M. or any of them, except the said E. F. and G. H. and I. K. by reason of the premises in the said indictment specified; because they say, that the said residue of the said highway, in the said indictment mentioned, and therein alleged to be ruinous, miry, deep, broken, and in decay, adjoins, and from time whereof the memory of man is not to the contrary hath adjoined to, certain lands in the parish of M. aforesaid, now and at the time of the taking of the said indictment, in the several occupations of the said E. F. and G. H. and I. K.; and that the said residue of the said highway, in the said indictment mentioned, and therein alleged to be ruinous, deep, miry, broken, and in decay as aforesaid, from time whereof the memory of man is not to the contrary, until the inclosure thereof hereinafter mentioned, was a certain common king's highway, upon and leading over a certain piece of open and uninclosed ground, called ———, of which the said several lands, in the several occupations of the said E. F., G. H., and I. K. were parcel, and not separated or divided from the same by any fence or inclosure. And that afterwards, to wit, on, &c. (h) the same residue of the same highway was inclosed on both sides thereof by certain fences, then erected and made in and upon the said respective lands, now in the occupation of the said E. F. and G. H. and I. K. and continually from that time hitherto hath continued, and still continues (i), so inclosed as aforesaid; and at the time of the taking the said indictment, and continually from thenceforth hi-

are exempted from the charge by legislative provision, the burthen immediately devolves upon the parish at large. 2 *Ld. Ray.* 1169. 2 *Saund.* 159. n. 9.

(h) About the time of the inclosure.

(i) This is necessary, since if a person bound to repair an highway, in consequence of his inclosure of the adjacent land, lay it open again, he gets rid of the obligation. 1 *Haw. c.* 76.

s. 7.



therto hath been, and still is continued so inclosed by the said E. F., G. H., and I. K. respectively, by and with the respective fences of their said respective lands. And that the said E. F., G. H., and I. K. respectively, by reason of their said continuance of the said inclosure of the said residue of the said highway, so being ruinous and in decay as aforesaid, ought to have repaired and amended, and still ought to repair and amend, the said residue of the same highway, so long as they have continued and shall continue the said inclosure, in manner following, that is to say, the said E. F. ought to repair and amend so much of the said residue of the said highway throughout the whole breadth thereof, as hath been so continued inclosed by him, on both sides thereof as aforesaid; and so much thereof as hath been so continued inclosed by him on one side thereof only, the said E. F. ought to repair the same highway, on that side thereof, as far as the middle of the same highway (*k*); and the said G. H. and I. K. respectively ought, in like manner, to repair the respective parts of the said residue of the said highway adjoining to the said respective inclosures, so continued by them respectively as aforesaid, throughout the whole breadth thereof; where the same is so inclosed by them respectively on both sides thereof, and where the same is so inclosed by either of them on one side thereof only, then the said G. H. and I. K. respectively ought to repair the same respective parts, so inclosed by either of them on one side, on such respective side only as far as the middle of the same highway, so long as their said respective inclosures shall be continued by them respectively as aforesaid; and this the above-mentioned A. B. and C. D. for themselves and the rest of the inhabitants of the said parish of M. (except as aforesaid) are ready to verify (*l*); wherefore they pray judgment of the court here, and that they may be dismissed and discharged of the premises in the said indictment above specified.

(*k*) See note (*g*), p. 668.

(*l*) If a parish be indicted for not repairing an highway, or a county for not repairing a bridge, and throw the charge upon another, the plea ought

not to traverse the obligation to repair; for it would be a traverse of a matter of law, and therefore demurrable. See 1 Saund. 23. 2 Saund. 159. n. 10.

297. *Plea by a parish, that the road in question is a new road, made by virtue of an act of parliament, alleging a custom for particular townships, and of particular districts in one of those townships, to repair their own highways, and alleging that the other highways in that township were repairable by particular individuals, ratione tenuræ, and that the highways in question were so repairable, no determination as to the repairs having been made in pursuance of the recited act.*

And hereupon A. B. and C. D. two of the inhabitants of the said parish of B. by ———, their attorney, come, and having heard the said indictment read, say that they do not intend that our said lord the king will further proceed against the inhabitants of the said parish of L. upon the said indictment, by reason of the premises in the indictment aforesaid above specified, because they say \* that the said parts of the said common highway, so being in decay as in the said indictment is specified, during all the time aforesaid, and also at the time of passing a certain act of parliament made and passed in the 47th year of the reign of our said lord the king, entitled, "An act to continue, &c." (*setting out the title of the act,*) were, and from thence hitherto have been, and still are, parts of the diverted, or new line of road in the said act made and passed in the 47th year aforesaid mentioned, and that the said parish of B. now is, and at the time of taking the said inquisition was, and from time whereof the memory of man is not to the contrary, hath been divided into divers, to wit, seven districts and different townships, to wit, E. F., G. H., &c. And that within the said township of H. there now are, and from time whereof the memory of man is not to the contrary, there have been divers, to wit, three distinct and different districts, to wit, one district there called M. one other district there called N. and one other district there called O.; and that within the said township of H. but not within the said several districts thereof, there now are, and from time whereof the memory of man is not to the contrary, there have been certain lands and tenements respectively called P., Q., R., S., &c. And the said A. B. and C. D. further say, that within the said parish there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain ancient and laudable cus-

tom there during all the time aforesaid, used and approved of, with respect to the repairing of all and every the king's common highways within the said parish, that would, but for the said custom, be repairable by the inhabitants of the said parish or B. at large, that is to say, that the same respectively should be, and the same respectively have, during all the time aforesaid, been, and during all the time aforesaid of right ought to have been, and still of right ought to be repaired and amended by the inhabitants of the respective townships, within which the same respectively lie, or of some district thereof, within which the same respectively lie, and not by the inhabitants of the said parish at large; and that the said inhabitants of each respective township should be, and they have during all the time aforesaid been, and of right ought to have been, and still of right ought to be, exempted and discharged from the repairs of the said king's common highway, lying and being within the said parish, out of their own respective townships. And the said A. B. and C. D. further say, that all and every the common king's highways lying and being within the said township of H. that would otherwise and but for the custom aforesaid, have been repaired by the inhabitants of the said parish at large, have from time whereof the memory of man is not to the contrary, until the making of the said diverted or new line of road, been repaired and amended, and have been used and accustomed to be repaired and amended, and from that time hitherto, except so far as the liability to repair the same is altered by the effect and operation of the said respective acts of parliament, of right ought to have been, and still of right ought to be repaired and amended, in manner following, that is to say, the same common king's highways lying within each of the said districts, by the inhabitants of each respective district repairing and amending the same common king's highways lying within their own respective districts; and the said A. B. and C. D. further say, that all and every the common king's highway lying and being within each of the same respective lands and tenements, respectively called P., Q., R., &c. have, from time whereof the memory of man is not to the contrary, until the making of the said diverted or new line of road, been repaired and amended, and have been used and accustomed to be repaired and amended, and from that time hitherto, except so far as the liability to repair the same

is altered by the effect and operation of the said respective acts of parliament, of right ought to have been, and still of right ought to be, repaired and amended by the respective occupiers of those respective lands and tenements, by reason of the tenure of the said respective lands and tenements, in manner following, that is to say, the same common king's highway lying within the said lands and tenements called P. by the occupiers of those lands and tenements, and the same common king's highway lying within the said lands and tenements respectively, called Q. and R. or either of them, by the several and respective occupiers of those respective lands and tenements jointly. And the said A. B. and C. D. further say, that before and until the making of the said diverted or new line of road, part of the said old road from R. to B. in the said act mentioned, to wit, of the length, &c. and of the breadth, &c. did lie within the said township of H. and out of the said districts, and within the lands and tenements called P. and which, during all the time in the said indictment mentioned, was, and still is in the occupation of S. T. and one U. W. and also one other part of the same road, to wit, of the length, &c. and of the breadth, &c. did lie within the said township of H. and out of the said districts, and within the same lands and tenements called Q. and which, during all the time in the said indictment mentioned, was, and still is, in the occupation of one M. A.; and that the said part of the said common king's highway in the said indictment first mentioned, did, during all the time last aforesaid, lie, and still does lie, within the lands and tenements called R. and within the said township of H.; and that the said part of the said common king's highway in the said indictment secondly mentioned, did, during all the time last aforesaid, lie, and still does lie, within the said lands and tenements called S. and within the said township of H.; and that no determination hath been made by any two justices of the peace, according to the form and effect of the said act of parliament passed in the 47th year aforesaid, what part or parts of the said new road should be repaired by the respective parties interested therein, and liable to repair the same respectively; and this the said A. B. and C. D. are ready to verify, wherefore they pray judgment, &c. (*as in the last pr.*)

298. *Plea, that the parish consists of several townships, each of which is bound by custom to repair its own roads (m).*

And A. B. and C. D. two of the inhabitants of the parish of B. by M. N. their attorney for themselves and the rest of the inhabitants of the said parish, except the inhabitants of the townships of C. and H. hereinafter mentioned, come, and having heard the said indictment read, say, that they do not intend that our said lord the king ought further to proceed against the inhabitants of B. except as aforesaid, by reason of the premises in the said indictment specified, because they say that the said parish of B. now is, and at the time of the taking of the said inquisition was, and from time whereof the memory of man is not to the contrary, hitherto hath been divided into divers, to wit, seven districts and different townships, that is to say, one township there called C. and one other township there called H. and that within the said parish there now is, and at the time of the taking the said inquisition there was, and during all the time aforesaid there hath been, a certain ancient and laudable custom there during all the time aforesaid used and approved of, that is to say, that the inhabitants of each of the said several townships, from time whereof the memory of man is not to the contrary, have repaired, maintained, and amended, and have used and been accustomed to repair, maintain, and amend, and during all the time aforesaid of

(m) Where different districts in a parish have for time immemorial been accustomed to repair the highways lying within them, the prescription should be pleaded to an indictment against the parish at large, for the parish would be concluded by a judgment against it, unless *fraud*, R. v. St. Pancras, Peake. N. P. 219. want of notice, &c. Doug. 421. R. v. Townsend,

1 Saund. 159. n. 10. R. v. Leominster, could be shewn in order to rebut such a conclusion. Mr. Serjeant Williams was of opinion, 2 Saund. 159. n. 10. that each district should separately plead the prescription and claim the exemption, as was done in an issue tried before Mr. J. Heath, at Heref. S. A. 1800. in the case of R. v. the inhabitants of Leominster.

right ought to have repaired, maintained, and amended, and still of right ought to repair, maintain, and amend all and every the king's common highways lying and being within their own respective townships, that would be otherwise repairable by the inhabitants of the said parish of B. at large, when and as often as necessary; and that the inhabitants of the said parish at large have not, during all or any part of the time aforesaid, repaired, maintained, or amended, and have not been used or accustomed to repair, maintain, or amend, and of right ought not to repair, maintain, or amend the king's common highways within the said parish, or any of them or any part thereof. And the said defendants further say, that so much of the said common king's highway in the said indictment mentioned, and therein alleged to be ruinous and in decay, as beginning at M. in the parish aforesaid, extends from thence eastwards, for the length of ——— yards, now is, and during all the time aforesaid hath been, situate and lying within the said township called C. and during all that time was and is one of the king's highways in that township, that, but for the said custom, would be repairable by the inhabitants of the said parish at large; and that the same part of the said highway, during all the time aforesaid, of right has been repairable, and during all that time ought to have been repaired, maintained, and amended, and still of right ought to be repaired, maintained, and amended, by virtue of the said custom, by the inhabitants of the said township called C. when and as often as necessary, and not by the inhabitants of the said parish of B. at large: and that the residue of the said highway in the said indictment mentioned, and therein alleged to be ruinous and in decay, now is, and during all the time aforesaid has been, situate and lying within the township called H. and during all that time was and is one of the king's common highways in that township, that, but for the said custom, would be repairable by the inhabitants of the said parish at large, and that the same part of the said highway, during all the time aforesaid, of right hath been repairable, and during all that time ought to have been repaired, maintained, and amended, and still of right ought to be repaired, maintained, and amended, by virtue of the said custom, by the inhabitants of the said township called H. when and as often as necessary, and not by the inhabitants of the

said parish at large; and this the said defendants are ready to verify, wherefore they pray judgment, &c. (*as before.*)

299. *Plea to a presentment that a particular liberty within the parish ought to repair, and not the parish at large.*

(*Commencement as in pr. 299.*) Say, that within the parish of S. M. aforesaid, there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain liberty or district called —, wherein there now are, and immemorially have been, divers inhabitants, and that the said part of the said highway in the said presentment above specified, and thereby supposed to be out of repair, now lies, and during all the time aforesaid hath lain, within the said liberty or district, to wit, at the parish aforesaid. And the said A. B. and C. D. further say, that the inhabitants of the said liberty or district, from time whereof the memory of man is not to the contrary, have repaired and amended, and have used and been accustomed to repair and amend, and still of right ought to repair and amend, all the common highways within the said liberty or district as often as occasion requires, by reason whereof the inhabitants of the said liberty or district ought to have repaired and amended the part of the said highway in the said presentment specified, and thereby supposed to be out of repair; and this the said A. B. and C. D. are ready to verify and prove as the court shall direct, wherefore they pray judgment, &c.

300. *Plea by a township to an indictment for not repairing an highway, confession as to part, not guilty as to the rest.*

And A. B. and C. D. &c. say, that as to so much of the said highway in the said indictment mentioned, and therein supposed to be ruinous, miry, deep, broken, and in decay, as lies betwixt the said place in the said indictment mentioned, called B. G. and a certain place at the township of L. aforesaid, called S. H. containing in length ——— yards, they cannot deny that they are guilty of the premises in that behalf above laid to their charge in manner and form as by the said indictment is above supposed and alleged; and as to the rest of

the premises, by the said indictment above laid to their charge, they say for themselves and the rest of the inhabitants of the township of L. aforesaid, that they are not guilty thereof in manner and form as in and by the said indictment is above supposed, and of this they put themselves upon the country, &c.

301. *Plea that particular persons ought to repair particular parts of the highway.*

And A. B. and C. D. two of the inhabitants of the said parish of L. for themselves and the rest of the inhabitants of the same parish, (except E. F., G. H., I. K., L. M., &c.) come, and having heard the said indictment read, say, that they do not intend, that our said lord the king should further proceed against the inhabitants of the said parish of L. or any of them, (except, &c.) by reason of the premises in the said indictment specified; because they say, that the said part of the said highway, in the said indictment mentioned, and therein alleged to be ruinous and in decay, adjoineth, and from time whereof the memory of man is not to the contrary hath adjoined, to certain lands in the parish of L. called End Fields, now in the several tenures or occupations of the said E. F., G. H., &c.; and that the said part of the said highway ought to be repaired by the said E. F., G. H., &c. and in the respective parts and proportions following, (that is to say,) as for and concerning such part of the said highway, throughout the whole breadth thereof, as far as the same is adjoining to the aforesaid lands, in the possession of the said E. F. he the said E. F. ought to repair the same; and as for and concerning such part of the said highway throughout the whole breadth thereof, as far as the same is adjoining to and is between the aforesaid lands of the said E. F. on the north west side of the said road, and the aforesaid lands in the possession of the said G. H. on the south east side thereof, they the said E. F. and G. H. ought to repair the same; and as for and concerning such parts of the said highway, throughout the whole breadth thereof, as far as the same is adjoining on both sides thereof to the aforesaid lands in the possession of the said G. H. he the said G. H. ought to repair the same; and as for and concerning the residue of the said part of the said highway so in decay



as aforesaid, the said I. K. ought to repair the same; which said several and respective parts and proportions of the said parts of the said highway, so alleged to be ruinous and in decay as aforesaid, the said E. F., G. H., and I. K. ought respectively to repair and amend as aforesaid, by reason of their tenure of their said respective lands next adjoining unto the said part of the said highway in the said indictment mentioned, and therein alleged to be ruinous and in decay, as all those who held the respective lands ought and were wont to do, from time whereof the memory of man is not to the contrary (*n*); and this the above-named A. B. and C. D. for themselves and the rest of the inhabitants of the said parish of L. (except the said E. F., G. H., and I. K.) are ready to verify, wherefore they pray judgment, &c.

*302. Plea by an individual to an indictment for not repairing an highway or bridge.*

And the said A. B. by ——— his attorney, comes, and having heard the said indictment read to him, says, that he is *not guilty* (*o*) of the premises in the said indictment

(*n*) This is unnecessary, see p. 669. note (*i*).

(*o*) Whenever a defendant is charged with the repair of an highway or bridge against common right, it is competent to him to enter into a full defence under the general plea of not guilty; as where an individual or township is charged with the non-repair of an highway or a particular district, within a county, with the omission to repair a bridge. 1 Str. 180. *R. v. city of Norwich*, 3 Salk. 183. *R. v. St. Andrews*. *R. v. Wheaten Aston*, cited 2 Saund. 159. n. 10. For upon this issue it is incum-

bent upon the prosecutor to prove the liability of the defendant by tenure, &c. as stated in the indictment. But if the defendant will unnecessarily plead special matter in defence, he must shew in his plea who ought to repair. *R. v. Garnton*, 1 Sid. 140. Carth. 213. *R. v. Hornsey*. But such a plea differs from that of a parish in this respect, that in the former case it is necessary to traverse the obligation to repair. 2 Saund. 159. n. 10.; but still the plea would be demurrable, since it would amount to no more than the general issue.

specified, above laid to his charge, and of this he the said A. B. puts himself upon the country.

303. *Plea by a county (to an information) that an individual is bound to repair a bridge.*

That the inhabitants of the said county ought not to be charged with the repairing and amending of the said bridge, because they say, that otherwise, to wit, by a certain inquisition taken for our said lord the king, at C. in the said county, on, &c. before M. H. knight, then chief justice of our said lord the king, assigned to hold pleas before the king himself, T. T. knight, then and still being one of the justices of our said lord the king, assigned to hold pleas before the king himself, and W. H. baronet, and others their companions, &c. (setting out the caption, the indictment, conviction, and judgment,) as by the record and proceedings thereof, which our said lord the king for the correction of error hath lately caused to come into the court of our said lord the king, before the king himself, now remaining in the said court of our said lord the king here, at Westminster, plainly appears; and that the said A. B. and C. D. two of the inhabitants of the county aforesaid, in the name of all the inhabitants of the said county, further say and will verify, that the said bridge in the record of the said judgment mentioned, and the bridge in the information aforesaid mentioned and expressed, is one and the same bridge, and not another and different bridge, and that the judgment aforesaid yet stands and remains in all respects in full force, vigour, and effect, not reversed or otherwise impeached, and this the said A. B. and C. D. two of the inhabitants of the county aforesaid, are ready to verify, wherefore they pray judgment, and that the said inhabitants of the county of E. may be discharged of the premises aforesaid contained in the said information, and by the court here may be dismissed (a).

(a) The attorney-general demurred, and judgment was given for the king, because the bridge mentioned in the information was alleged to be in one parish, and the bridge mentioned in the indictment was in another. See Trem. P. C. 207.

304. *Counter-plea to a plea praying the benefit of the statute, that the benefit of the statute has already been allowed.*

And the said W. C. esquire, attorney-general for our said lord the king for the county palatine of Lancaster aforesaid, who prosecuteth for our said lord the king in this behalf as aforesaid, having heard S. B. who stands convicted at this present session of hearing and determining and general delivery, now here holding for the county palatine of Lancaster, of unlawfully and feloniously, and against the form of the statute, putting off, (*setting out the offence in the indictment, as in pr. 164.*) pray that the benefit of the statute in such case made and provided may be allowed to the said S. B. saith that the said S. B. is not entitled to the benefit of the statute in such case made and provided, because she the said S. B. otherwise called S. M. by the name and description of S. B. late of, &c. singlewoman, heretofore, to wit, at the general session of assizes of our sovereign lord George the third, then (b) king of Great Britain, France, and Ireland, defender of the faith, and so forth, of hearing and determining and general gaol delivery, held at the castle of Lancaster, in and for the said county palatine of Lancaster, on, &c. before his majesty's trusty and well beloved Sir Soulden Lawrence, knight, one of the justices of our said sovereign lord the king of his majesty's Court of King's Bench, at Westminster, chief justice of our said sovereign lord the king of his majesty's Court of Common Pleas within the said county palatine of Lancaster, and chief justice of all manner of pleas within the said county palatine assigned to be held, heard, and determined, and his majesty's trusty and well beloved Sir Simon Le Blanc, knight, one other of the justices of our said sovereign lord the king of his majesty's Court of King's Bench, at Westminster, one of the justices of our said sovereign lord the king of his majesty's said Court of Common Pleas within the said county palatine of Lancaster, and one of the justices of all manner of pleas within the said county palatine assigned to be held, heard, and de-

(b) The first conviction was before the union.

terminated, and others their companions, justices and commissioners of our said sovereign lord the king, by the letters patent of him the said lord the king, under the seal of the said county palatine of Lancaster, to the said Sir Soulden Lawrence and Sir Simon Le Blanc and others, or any two or more of them directed, whereof the aforesaid Sir Soulden Lawrence and Sir Simon Le Blanc, amongst others our said lord the king would have to be two, as well to hear and determine as inquire by the oaths of honest and lawful men of the said county palatine of Lancaster, and by other ways, means, and methods, which they could as well within liberties as without, by which the truth of the matter might be better known and inquired of, all treasons, misprisions of treason, insurrections, rebellions, murders, felonies, homicides, burglaries, manslaughter, rapes of women, unlawful congregations and conventicles, unlawful speaking of words, coadjunctions, misprisions, confederacies, false allegations, trespasses, riots, routs, retainings, escapes, contempts, falsities, negligences, concealments, maintenances, oppressions, champarties, deceits, and other misdemeanors, offences, and injuries whatsoever, and of the accessories to the same within the county aforesaid, as well against the form of the statutes as against the common law, by whatsoever and however had, made, perpetrated, or committed, and by whom and to whom, when, how, and after what manner, and of other articles and circumstances, the truth of the premises or any of them in any wise concerning, and the same treasons and other the premises to hear and determine, and the gaol there to deliver, according to the law and custom of the kingdom of our said sovereign lord the king, assigned, and so forth. For that she the said S. B. being a person of evil name and conversation, and intending to deceive and injure the liege subjects of our said lord the king, to wit, on, &c. with force and arms, at, &c. 20 pieces of false and counterfeited milled money and coin, each and every of them made and counterfeited to the likeness and similitude of a piece of good, lawful, and current milled money and silver coin of this realm called a shilling, the same counterfeited pieces of money or any of them not being then cut in pieces, then and there unlawfully and feloniously did take and receive of and from one P. M. at a lower rate and value than the said counterfeited pieces of milled money did by their denomination import and were coined

and counterfeited for, that is to say, for five pieces of current silver money and coin of this realm called shillings, being of the value of 5s. against the form of the statute, &c. and against the peace, &c. 'And the said S. B. was therefore convicted, and prayed that the benefit of the statute in such case made and provided might be allowed to her the said S. B. and the same was allowed to her accordingly, and it was considered by the court here, that the said S. B. should be fined one shilling, and imprisoned one year, which he the said W. C. attorney-general for our said lord the king for the said county palatine of Lancaster, is ready to verify and prove by the record thereof; and that the said S. B. who stands convicted at the present general session of assizes and general gaol delivery now here holding for the county palatine of Lancaster, is the same person who was convicted at the said general session of assizes and general gaol delivery, holden at the castle of Lancaster, in and for the said county palatine of Lancaster, on, &c. and not another or different person; wherefore, since the said S. B. hath already received the benefit of the statute and been admitted to her clergy, the said W. C. esq. attorney-general for our said lord the king for the said county palatine of Lancaster, prayeth judgment of the court here, and that the said S. B. may receive judgment to die according to law.

305. *Certificate of the former conviction.*

These are to certify, that at the session of our lord the king, of oyer and terminer and general gaol delivery, held for our said lord the king at K. in and for the county of S. on, &c. before, &c. and others their fellows, justices of our said lord the king, assigned to hear and determine and to deliver the said goal of the prisoners therein being, A. B. late of, &c. labourer, was tried upon an indictment, for that he the said A. B. on, &c. with force and arms, at, &c. in the county aforesaid, one piece of copper money of this realm, called an halfpenny, then and there unlawfully and feloniously did make, coin, and counterfeit, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity: and further, that he the said A. B. on, &c. with force and arms, at, &c. one piece of false, feigned, and counterfeit copper money, to the

likeness and similitude of the good, legal, and current copper money of this realm, called an halfpenny, then and there unlawfully and feloniously did make and coin, against the form, &c. and against the peace, &c.; and was thereupon convicted, and prayed that the benefit of the statute in such case made and provided might be allowed to him the said A. B. and the same was allowed to him accordingly; and it was thereupon ordered by the said last-mentioned court, that he pay a fine of one shilling to our said lord the king, and be imprisoned in the gaol of our said lord the king for the said county, for the space of nine months, as appears by the records of my office, dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

M. N. clerk of assize.

306. *Replication, denying the liability ratione tenura.*

And M. N. esquire, coroner and attorney of our said sovereign lord the king, in the court of our said lord the king, before the king himself, who prosecuteth for our said lord the king in this behalf, for our sovereign lord the king saith, that by any thing in the said plea above alleged, our said lord the king ought not to be barred from prosecuting the said indictment against the said inhabitants of the said parish of L. in the said county of M. because, protesting that he doth not acknowledge any thing in the said plea to be true for plea in this behalf, for our said lord the king saith, that the said E. F. by reason of his tenure of the said lands and tenements in the said plea mentioned, ought not to repair the said part of the said highway by the said indictment supposed to be out of repair, as in the said plea is above alleged; and this the said coroner and attorney of our said lord the king, for our said lord the king prayeth may be inquired of by the country; and the said A. B. and C. D. two of the inhabitants of the said parish of \_\_\_\_\_, for themselves and the rest of the inhabitants of the said parish do the like.

307. *Replication, traversing the custom alleged in the plea, that particular divisions of a parish ought to repair.*

And the said W. C. king's serjeant at law, attorney general of our said lord the king of his county palatine of Lancaster, who prosecutes for our said lord the king in

this behalf, saith, that by reason of any thing by the said A. B. and C. D. above in pleading alleged, our said lord the king ought not to be precluded from maintaining his said indictment against the inhabitants of the said parish of L. because he saith, as before, that the inhabitants of the said parish of L. in the said county of Lancaster, the said parts of the said common king's highway so being in decay as aforesaid, ought to repair and amend when and as occasion may require, and that within the said parish there is not now, nor from time whereof the memory of man is not to the contrary, hath there been such ancient and laudable custom there during all the time aforesaid used and approved of, with respect to the repairing of all and every the king's common highways within the said parish, that would, but for the said supposed custom, be repairable by the inhabitants of the said parish of L. at large, as by the said A. B. and C. D. is above in pleading alleged; and this the said attorney-general, who prosecutes as aforesaid for our said lord the king, prays may be inquired of by the country, &c.

## APPENDIX NOTES.

P. 10. The stat. 13 G. 3. c. 31. s. 4. is extended to the united kingdom by stat. 44 G. 3. c. 92.; and by the latter stat. receivers of such stolen goods may be tried in the county in which they receive the same.

P. 15. *On the high seas, &c.* The Court of Admiralty has no jurisdiction to try offenders under the stat. 11 G. 1. c. 29., for procuring the destruction of a ship of which they were owners, unless there be evidence of an act of procurement done on the high seas within the jurisdiction of the court. *R. v. Easterby and Macfarlane*, East. P. C. Addenda, 26.

P. 21, note (c). See also *Esser's case*, East. P. C. 1125.

P. 25, note (n). See also 2 Taunt. 252.

P. 40, joinder of offences. It is no objection to the indictment, that the punishment for one of the offences is positive, and for the other discretionary, *R. v. Hill Darley*, 4 East. R. 174.

P. 41. When a second offence is alleged in the same indictment, it ought to be prefaced with an *ulterius præsentant*, per Holt, C. J. *Cranburn's case*, St. Tr. 8 W. 3.; and an *ulterius præsentant* ought to be laid *super sacramentum suum*. *Trobridge's case*, cited by Shower, in *Cranburn's case*.

P. 45. *Statute of additions*. Presentments are within the stat. though they are not named, Burr. 2556. Leon. 200.

P. 59, note (x). See 8 East, 174.

P. 60. In a declaration for a nuisance, if no place be mentioned, the county in the margin will be intended, *Warren v. Webbe*, 1 Taunt. 379. *aliter* in an indictment, 1 Buls. 205.

P. 64. *Fifthly, &c.* And also to direct the attention of the jury to the particular facts concerning which they are bound to inquire.

P. 65. The keeping of a gaming house is an offence which may be described in general terms, since it consists of a multiplicity of facts, per Grose, J. Leach, 555.

P. 85, note (d). See *Sharwin's case*, East. P. C. 341. and *supra* 405, note (c).

P. 89. *False pretences, &c.* Any material variance between the pretence alleged and proved, will vitiate the indictment, as where the indictment averred that the defendant pretended that



he had paid a sum of money into the Bank of England, and in evidence it appeared that he had merely pretended that the money had been paid into the bank. *R. v. Plestow*, 1 Camp. 194.

P. 108. *The substance of the matter sworn, &c.* If the indictment undertake to set out the *substance* of the matter sworn to by the defendant upon his examination, the whole must in substance be proved, though several distinct perjuries be assigned. *R. v. Leefe*, 2 Camp. 134.

P. 108. *Perjury.* In an indictment for perjury on an affidavit to hold to bail, it is unnecessary to set out the jurat, *R. v. Emden*, 9 East. 437. and if it be set forth, and it thereby appear that the affidavit was sworn in another county, the variance will not be material, *ib.*

P. 112. *Assignment of perjury, &c.* The indictment will be supported on motion in arrest of judgment, if any one assignment of perjury be good, though the rest are vicious. *R. v. Rhodes*, 2 Ld. Ray. 886.

P. 121. *Where the act uses several descriptive terms, &c.* In an indictment under the stat. 39 G. 3. c. 58. which prohibits the taking more than is due for portorage, a *basket* cannot be described as a *parcel*, since the stat. mentions both; but if the defendant be charged under the stat. 30 G. 2. c. 24. for obtaining the money overcharged by false pretences, the variance would not be fatal. *R. v. Douglass*, 1 Camp. 212.

P. 147, note (r). See *R. v. Moors*, 6 East. 419.

P. 152, note (n). Add Gordon's case, *Leach*, 581. 3 T. R. 692.

P. 189. *Ownership.* If the goods of a parish be stolen, they may be described in an indictment for sacrilege, as the goods of the churchwardens, *R. v. Artly*, York Sum. Ass. 1814. If the goods of an uncertificated bankrupt be stolen, they may be described as the property of the bankrupt, *Webb v. Fox*, 7 T. R. 391. If a feme sole be robbed, and marry before an indictment is found, the ownership should be described by her maiden name, *Leach*, 606.

P. 191. *Where property is taken from a servant, &c.* If the indictment charge the defendant with obtaining the money of the *master*, and it appear that the money belonged to the *servant*, who was afterwards reimbursed by the master, the variance will be fatal. *R. v. Douglass*, 1 Camp. 213. Though *it seems* it would be otherwise if the servant, at the time, had in his hands an equal or a larger sum belonging to the master.

P. 204. The court can only take notice of misrecitals of private acts of parliaments, where *nul tiel* record is pleaded, except as to the commencement, prorogations and sessions. 1 Lev. 206. *Doug.* 97. 1 Lord Ray. 318. 1 Salk. 330.

P. 212, note (d). See also *Emmott v. Fawcett*, 1 And. 49.

Hinton v. Roffey, 3 Mod. 35. Foster's case, 11 Co. 58. R. v. Remnant, 5 T. R. 170. R. v. Jukes; 8 T. R. 536.

P. 233. *Comprehended two distinct offences.* See Appendix, note to pr. 41.

P. 241. *Variance.* The indictment set out an order as made by B. U. *esquire*, one of his majesty's justices, assigned, &c. for the county of C. the order appeared to have been made by B. U. *clerk*, a justice appointed for a particular district within the county, and the variance was holden to be fatal. R. v. Tanner & al. 1 Esp. 304.

P. 316. *Justification.* See a plea of justification to an information for obstructing the execution of a warrant. Trem. 273.

P. 323. *Default of a juror.* The rule is now otherwise. See Leach, 618. 706. Fost. 76.

P. 326. A person charged with an offence against one stat. may be found guilty of a more general offence against another stat. East P. C. 1021. See p. 217.

P. 339. In a special verdict against a principal in the second degree, the jury must either find that he was present, *aiding and abetting* in terms, or that he did such acts as shew he was present, and constitute him an aider and abettor in point of law. R. v. Messenger, Appletree, and others, Kel. 77. 2 St. Tr. 591. R. v. Borthwick, Doug. 201. In the case of Royce, who was indicted under the stat. 1 G. 1. st. 2. c. 5. for feloniously beginning to demolish a dwelling house, the jury found, "that the said John Royce was then and there present, and did then and there encourage and abet the said persons unknown, in beginning to demolish and pull down the said dwelling-house, by then and there shouting and using expressions to excite the said persons so to do, but that the said John Royce did not with force begin to demolish, or pull, or do any act with his own hands or person, otherwise than as aforesaid," and the court, after the matter had been argued twice, held that the verdict was sufficient, Burr. 2073.

P. 342, note (a). See also Str. 853. 968. 1227. Burr. 930. Com. Dig. Ind. N.

P. 383. See Kel. 32.

P. 407. note (h). But in the case of R. v. Hill Darley, 4 East, 174. it was holden, that the case was within the statute, though the assault was committed at a subsequent time and place, and after abusive language between the parties in consequence of the winning.

P. 535, pr. 166. In an indictment for uttering base money twice on the same day, it is not necessary to allege in the words of the statute, a second uttering on the *same day*, it is sufficient if the second uttering upon the face of the indictment appear to

have been committed on the same day; as by alleging each uttering to have taken place on the 14th day of Feb. in the year 1801. *Martin's case*, *East. P. C. Addenda*, 18. for though when the day is not material, the fact may be proved on a day different from that laid, yet, where it is not indifferent, the time must be proved as laid. In an indictment against one who has before been convicted as a common utterer, it is not necessary to allege that the court adjudged him to be a *common utterer*, since that is a mere conclusion of law, and it is sufficient if the court adjudge him to suffer the punishment inflicted by law. *Michael's case*, *East. P. C. Addenda*, 19.

P. 713. If the inhabitants of a parish plead, that several included townships are bound by prescription to repair the highways within them, and that part of the highway in question is within one of those townships, and the residue within the other, the plea must specify how much lies within the one, and how much within the other. *R. v. Bridekirk*, 11 *East*, 304.

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THE END.

## ERRATA.

- Page 16, line 9, for "law" read *laud*.  
82, last line, for "his act" read *the death*.  
145, line 4, read *the object of the conspiracy was to be effected*.  
151, — 6, for "23rd" read *43rd*.  
156, — 5, for "10" read *16*.  
157, note (g), read *Lord Sanchar's case, 9 Co. 114*.  
161, line 22, read *shillings, at the rate of 30 of such counterfeit pieces*.  
163, — 11, dele "indeed."  
171, — 4, for "manner" read *names*.  
196, — 17, for "chattels" read *chattel*.  
221, — 6, read *upon view of the body was taken before J. S. without,*  
    *&c.*  
246, — 13, read *vicecomitibus*.  
276, — 14, for "issue" read *inquest*.  
278, — 7, dele "as "  
299, last line but 6, for "pleaded" read *pleads*.  
414, last line of text, for "of" read *in*.





